
(1991) 03 BOM CK 0026

In the Bombay High Court

Case No : Criminal Appeal No. 51 of 1991

Dilipkumar Tarachand Gandhi and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 3

Citation : (1992) 1 BomCR 59

Hon'ble Judges : M.S. Vaidya, J;M.L. Dudhat, J

Bench : Division Bench

Advocate : V.R. Manohar, K.R. Dhanuka, M.B. Naidu, V.M. Kanade, V.C. Daga, Rajesh Behere and Subhangi Deshmukh and Manjula Rao, for the Appellant; M.V. Paranjape, Special Public Prosecutor, Vijayrao Mohite, S.V. Kulkarni, Selection grade Public Prosecutor, State C.I.D. (Creine), Hemant Chavan and S.G. Page, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.S. Vaidya, J.—This appeal is directed against the convictions and sentences awarded on 26-12-1990 by the First Additional Sessions Judge, Nagpur in Sessions Case No. 190 of 1986 on his file. The present appellants, who were accused Nos. 1 and 2 in that case, were convicted of an offence punishable u/s 302 read with section 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 500/- each, in default, to suffer rigorous imprisonment for three months. Each of them was also convicted of an offence punishable u/s 201 read with 34, Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1000/- each, in default, to suffer further rigorous imprisonment for three months each. The substantive sentences were directed to run concurrently. Original accused Nos. 3 and 4 were acquitted in the case.

2. This appeal was initially filed before the Nagpur Bench of this High Court, but was transferred in course of time, to Bombay and was placed before us for

hearing of the bail application preferred by the appellants. At the time of hearing of the application for bail the parties agreed to have the matter disposed of finally. Accordingly, with the consent of all the parties including the learned Counsel for the original first informant, the matter was heard giving priority over all other matters.

3. The facts as they transpired are as follows: The accused No. 1 appellant No. 1 is a Chemical Engineer, who had passed his post-graduation in his discipline of education and had started his own business of production of certain chemicals at Nagpur, in partnership with some other person. His family hailed from village Arvi, a Taluka place about 90 miles away from Nagpur. The appellant No. 1 had taken a rented premises at Nagpur in Laxminagar area in the bungalow belonging to P.W. No. 8-Pranlal Pathak. The tenement was a self contained block. It contained one kitchen room, one bed room, one sitting room, a latrine and a bath room on the back side, behind a passage which was abutting both to the kitchen and the bed room. Accused No. 1-appellant No. 1 was married to deceased Geeta on 22-1-1984. Geeta was a university student, doing her post graduation in M.Sc. Microbiology, at the time of her marriage. After the marriage, she continued to live for about 3 months in the Women's Hostel to complete her studies and to enable her to appear for her M.Sc. Examination. She did appear for the examination and stood first in the University. Geeta was not all in good health since before her marriage. Even after her marriage, she was all along under treatment of one doctor or the other for her ailments. Some time after April 1984 she had conceived and she was pregnant for some time. In July 1984 she had gone to Akola, to the place of her father, but, unfortunately she had developed an ailment of jaundice at Akola. As a result of that ailment, she aborted at Akola. Appellant No. 1 had gone to Akola to bring her back to Nagpur for the purposes of giving her better medical treatment at Nagpur. Her ailment continued for some time, but ultimately she got over it. Thereafter, she had again conceived and was again pregnant. At about the time of the alleged offence, which is said to have taken place on 22.4.1985, she was in fourth month of her pregnancy. Deceased Geeta, however, desired to make a career in Pathology and she wanted to start a Pathological Laboratory of her own at Nagpur. Thereafter, she was working with P.W. No. 13 Dr. Kane, a senior Pathologist from nagpur, till about 8 days before the incident of the offence. Geeta could not attend Dr. Kane's Laboratory for about a week before the incident of the offence on account of her ill-health. 22nd of April 1985 was an auspicious day of "Akshaya Tritiya" and deceased Geeta had invited her father-in-law, the accused No. 2-appellant No. 2, to Nagpur to have a brief stay with No. 1-appellant No. 1 and deceased Geeta. Accordingly, appellant No. 2 had arrived at Nagpur, at the residence of Geeta and appellant No. 1, in the evening on 21.4.1985.

4. It is on this ground that the offence, in question, is said to have taken place early in the morning on 22.4.1985. Those being the days of summer, accused Nos. 3 and 4 i.e., younger brother and younger sister of appellant No. 1. had

slept on the terrace of the house whom P.W. No. 7 Rashila Pathak also was sleeping. Appellant No. 1 and deceased Geeta had slept in their own bed room. Appellant No. 2 had slept on a Diwan in the sitting room. At about 5.00 a.m. appellant No. 2 found smoke emitting from the bath room and he had raised cries. On hearing the cries, accused Nos. 3 and 4 P.W. No. 7 Rashila Pathak and P.W. No. 8 Pramlal Pathak had rushed to the house of the accused. Many others from the vicinity also gathered near the block. Deceased Geeta was found in the bath room lying in flames. Accused No. 3, probably acting on somebody's instructions, had contacted the police station at about 5.14 a.m. on telephone and had also telephoned the Fire Brigade, reporting to them the incident of fire. The Fire Brigade took its own time to reach the scene of offence and to extinguish the fire. After the fire was extinguished Geeta's body was found in extensively burnt condition lying on the floor of the bath room. The police arrived on the scene of offence. They drew the panchanama of the scene of offence and held an inquest. The dead body was sent to P.W. No. 18 Dr. Wase at about 2.35 p.m. for conducting, an autopsy on the dead body. The autopsy was conducted by Dr. Wase and Dr. Kureshi between 2.35 p.m. to 3.00 p.m. The Eyelashes, eyebrow were totally burnt and there was oozing of blood like fluid from mouth, nostril, tongue etc. The tongue was protruding out and was stained black. The scalp hair was burnt with neck. There were burns on both of the upper limbs. As regards the left limb, there was charring on the forearm with exposure to the end of the bones and elbow. Fingers were charred and flexed and the arm had superficial burns. The Trunk had burnt upto 36%. But the burns were deep in the pelvic region, left flank and on the back. The front of the chest above the level of 8th rib had superficial burns. The subcutaneous tissues on the reflection of skin were cooked and pinkish in colour only in the upper part of the anterior chest wall, the remaining portion of the trunk were roasted and charred to variable extent. As regards the left lower limb, the left antebellum and the portion of all the three components of the left hip bone were missing. Opening to the pelvis from the left side and the testicles were charred beyond recognition including the external genital. The lower right limb along with the right gluteal region had deep burns and the portion below the knee was charred upto the bones. The doctor opined that the injuries were generally ante mortem. But no opinion could be given on the point about the area which had extensive charring. Carbon articles were present only in the larynx. The doctor opined that the cause of death was shock due to burns and that the injuries caused by the burns were sufficient in ordinary course of nature to cause the death of the deceased. In course of time, the bones were also sent to the medical expert as well as to the forensic laboratory, Nagpur for expert opinion. In the mean while, the statements of various witnesses were recorded. The case was investigated into by P.W. No. 21- Assistant Commissioner of Police (C.I.D.) - Shri Patil upto 27-4-1985. Thereafter, P.W. No. 22 Commissioner of Police (C.I.D.) - Shri Shukla, was in-charge of the investigations from 28-4-1985 to 5-8-1985. Thereafter, P.W. No. 24- Deputy Superintendent of Police Shri Kadu, took over the investigations and finally submitted the charge-sheet.

5. Charge against accused persons was framed on 22.2.1990. Accused Nos. 1 to 4 were individually charged for an offence punishable u/s 302 Indian Penal Code and they were jointly charged for offence punishable u/s 302 read with 34, Indian Penal Code and 201 read with section 34, Indian Penal Code. Accused No. 3 was also charged separately for an offence punishable u/s 203, Indian Penal Code, on the allegations that he had intentionally given a few information about offence of murder committed by accused Nos. 1 to 4.

6. The accused persons pleaded not guilty to the charge. They denied to have committed any offence accused No. 1 - appellant No. 1 had filed written statement admitting his marriage with deceased Geeta and stating that Geeta was very clever in her studies and that after her marriage, her final examination in M.Sc. was given after accommodating her in a hostel till her examination was over. He admitted that when Geeta passed her examination with good marks, she was pregnant and she used to have, as such, the sick feeling. He contended that, she was also suffering from hyper-acidity and urinary infection. He maintained that in June or July 1984, Geeta was suffering from jaundice at her parents' place and had suffered an abortion, which resulted in consequent general weakness. He stated how Geeta was also along being treated by various doctors. According to him, in September 1984 she was treated by Dr. Subhedar on the ailment of pain in joints and general weakness. Again, in October 1984, she had some liver trouble and was treated by Dr. Arun Pawde at Arvi. In November 1984 she was suffering from hyper acidity and ulcer and was treated at Nagpur by Dr. Ravi Charde. In January 1985, it is contended, Geeta had again conceived and had more acute trouble of sick feeling and vomiting. She was then treated by Dr. Mrs. Kamala Joshi at Nagpur. She was admitted, it is stated, as an indoor patient, in March, 1985, in the Nursing Home of Dr. Mrs. Kamala Joshi. He contended that due to the first abortion and the constant ailments. Geeta had a frustrated feeling. Yet, it is contended, she was desirous of serving and was intending to start her pathology laboratory at Nagpur. He maintained that, therefore, she was encouraged to work at the Pathological laboratory of Dr. Kane as a part of her training. According to accused No. 1, Geeta was however, not able to attend the Laboratory regularly on account of her own illness. Accused No. 1 maintained that as his business in partnership was new, he had remained all along very busy with his work, as a result of which, Geeta started feeling lonely. She had developed a feeling of frustration and of having been subjected to ill-treatment. As regards the incident of the alleged offence, he contended that accused No. 2 had come from Arvi to Nagpur on 21.4.1985 at about 430 p.m. On the invitation of Geeta herself and accused No. 2 had brought for her a cooking range and a gas cylinder, as the family did not have, till then, a gas connection. According to him, on 21-4-1985 they had a late night dinner and at about 11.00 p.m. Accused Nos. 3 and 4, Suresh and Sunita, had left for the terrace for sleeping there- and accused No. 2 had gone to the sitting room to sleep under the fan. He told that he and his wife deceased Geeta, slept in their own bed room and after some reading accused No. 1 had gone to sleep. According to the

accused No. 1, deceased Geeta used to get up early in the morning at about 5.00 a.m. Every day and start her domestic work, such as washing clothes, taking bath etc. He maintained that she used to heat water for bath in a heater which was kept in the bath room. He also contended that some sundry articles, along with a five litre kerosene can, were kept on a wooden rack which was in the bath room. He maintained that on 22.4.1985 at about 5.00 a.m. He woke up due to cries raised by his father, accused No. 2, and then, rushed out of his room to see what had happened. According to him, No. 2 was standing in front of the bath room, from which the smoke was emitting. When accused No. 1 had peeped inside the bath room. He had found Geeta lying on the floor of the bathroom and burning. He contended that he immediately rushed to his room for fetching water but had found the bucket kept near the cooler empty. According to him, the other buckets were in the bath room and they could not be taken out of the bath room due to the fire. He instructed accused No. 3, Suresh, who, along with Sunita-accused No. 4, had come down stairs by that time, to give telephone messages to the Fire Brigade and the police, and, that as a result, the Fire Brigade had come to the scene of offence and had extinguished the fire. He contended also that he had instructed accused No. 3 Suresh to contact on telephone one Geeta Chandak and also his own in-laws at Akola.

7. Accused No. 2 Tarachand also had given his written statement on similar lines with the addition of some more particulars. According to him, when he had got up at about 5.00 a.m. on 22.4.1985 and had gone to the latrine for easing himself, he had noticed smoke emitting from the bath room. He maintained that the door of the bath room was bolted from inside but the same was not fitted properly. According to him, the bolt used to insert only to a short length inside the hook of the bolt and that, when he had tried to give push to the door to open it, the door did not open in the first attempt. He contended that he, then, had pushed the door with force and the door was then, opened. According to him, he had noticed the bath room full of smoke and he was, therefore, unable to see anything in the bath room. He maintained that when the smoke had thinned in the bath room, he had noticed Geeta burning and lying on the floor of the bath room. He contended that thereafter, he had raised cries and had called accused No. 1 Dilip. He had noticed, according to him, the heater inside the bath room without the lid on it and had, then, pulled it out with the wire which was fixed in the power plug. He contended that the wire had come out with the pin but, he contended that, as the water tap was inside the bath room and the bath room was full of fire nothing could be done to take water for extinguishing the fire. Like accused No. 1 - Dilip, he also told that a message was given by accused No. 3 to the Fire Brigade and the Fire Brigade had extinguished the fire.

8. Accused Nos. 3 and 4 had filed their own written statements on similar lines.

9. No defence witness was examined at the trial. None of the accused had stepped in the witness box to give evidence on oath.

10. After hearing, the learned Additional Sessions Judge, Nagpur, accepted the

prosecution story as was developed at the state of evidence on the point of alleged motive, harassment and ill-treatment to deceased Geeta since the time of her marriage, and held that the place of the offence was the residential house of the accused persons and therefore, undisputedly the accused Nos. 1 and 2 were present in the house at the relevant point of time. He held that they had, therefore, opportunity to commit the crime in question. Dwelling at length, upon the nature of injuries found on the person of the deceased and the expert evidence of the Medical Officers and the Chemical Analyser and, further, upon the inactivity of the accused persons in the context of extinguishing the fire, the learned Additional Sessions Judge came to the conclusion that the evidence on record, though substantial in its nature, unfailingly proved that there was neither the case of an accident nor of a suicide. Therefore, he came to the conclusion that it was a case of homicidal death. Holding, therefore, the accused Nos. 1 and 2 guilty of the offences as stated at the out set, the learned Additional Sessions Judge awarded them convictions and sentences as noted above.

11. Mr. Manohar, the learned counsel for the appellants took us through the evidence and submitted that though the circumstances established in this case were very few and though they were such as would not connect with the commission of the crime, the learned Additional Sessions Judge had fallen into an error by jumping to a conclusion that the appellants were guilty of the offences of which they were charged. He submitted that there was evidence of as many as of 4 to 5 witnesses who had reached the scene of offence even as Geeta was burning in her bath room and though none of them had stated that the accused persons were pouring kerosene on the person of deceased Geeta so as to keep her burning till death, the learned Additional Sessions Judge had erroneously held that the death of Geeta was caused on account of incessant pouring of oil on her person after the fire was set on. It was submitted that the medical evidence showed only that the lower limbs and some lower part of the trunk of the body of the deceased were burnt extensively and that this finding could not be consistent with the theory of pouring kerosene oil on Geeta after she had caught fire. It was also submitted that the emphasis on the evidence of the Chemical Analyser was also misplaced because, the prosecution had failed to prove that the articles which were seized from the scene of offence along with the debris, were the same articles which were sent to the Chemical Analyser for examination and analysis. He submitted that the learned Additional Sessions Judge was wrong in jumping to the conclusion that deceased Geeta was incapacitated by the appellants before she was set on fire and that the absence of shrieks by Geeta was due to that circumstances. He submitted that there was nothing in the evidence on record which could justify such a conclusion. On the other hand, he pointed out to us the police statement of Dr. Damale, a next door neighbour, who had his house abutting the window of the bath room and who had stated that he had heard the shrieks of deceased Geeta. He submitted that the prosecution was not justified in committing to examine such a witness whose version was vital to the defence of the appellants. He submitted that an adverse

inference had to be drawn against the prosecution on account of the elimination of the evidence of Dr. Damale. It was submitted that the Additional Sessions Judge did not do so but utilised absence of shrieks as an incriminating circumstance against the accused. He submitted, further, that the learned Additional Sessions Judge erroneously failed to appreciate the explanation given by the appellants as to why they could not pour water on the person of the deceased and why they were obliged to the help of the Fire Brigade for extinguishing the fire. He submitted that there was no reason to suppose that there was any water in the house or that, the tap which was in the basin adjoining the passage to the bath room, had running water at the relevant point of time. He submitted that the learned Additional Sessions Judge had ignored the circumstance that none of the neighbours who had arrived on the scene of offence could do anything to extinguish the fire. It was, therefore, submitted that the alleged inactivity on the part the accused was, in fact, no inactivity but, was an instance of helplessness in the given circumstance. It was submitted that this was not a dowry death. Much less was there any evidence about any physical or mental torture to deceased Geeta at the hands of anybody in the house of the family of the accused No. 1. It was contended that Geeta was all along treated by her in-laws with affection and they, on their part, had no reason what so ever to coerce Geeta to such a painful death. The learned Counsel was specific in submitting that the accused persons were as much ignorant as the prosecution, as to the cause of death but in the given circumstances, there was room to suppose that in a hyper-frustrated mood of nervous depression Geeta might have committed suicide or, in the alternative, Geeta had faced an accidental death in the bath room, due to heat of the summer, failure of electrical gadget due to short circuit and the saree of synthetic yarn on her person. He submitted that lower Court was wrong in relying upon the rulings in *State of Delhi v. Laxman Kumar* 1986 Cr.L.J. 155 and *Subedar Tewari Vs. State of U.P. and Others*, , as both of the cases were clearly distinguishable on facts. It was submitted that the Supreme Court had arrived at its own decisions on those two cases on the basis of evidence which according to their Lordships, had unflinchingly had proved the guilt of the persons, who were at trial before Their Lordships. He relied upon the rulings in *Hate Singh Bhagat Singh Vs. State of Madhya Bharat*, and *In Re: Narsiah and Others*, , which dealt with the evidentially worth of the statements given by the accused persons u/s 342 of Code of Criminal Procedure, 1898 (equivalent to section 313 of the Code of Criminal Procedure, 1973) and submitted that if the prosecution evidence had failed to prove that the defence taken by the appellants was unreasonable or was untruthful, the said statements were entitled to the credence as if that was the evidence of the accused persons given on oath.

12. The Counsel for the appellants relied also upon the observations of the Supreme Court in 1991 C L J 330 in which, following the earlier decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, , it was laid down that the prosecution must stand or fall on its own legs and it could not derive any

strength from the weakness of the defence. It was also pointed out by Mr. Manohar that the Supreme Court had laid down that it was not the law, where there was infirmity or lacuna in the prosecution case, that the same, could be cured or supplied by false evidence adduced by the accused or a false plea taken by him which was not accepted by a Court. He submitted that considering the evidence as a whole, the prosecution had utterly failed to prove the guilt of the appellants and that, therefore, the appellants were entitled to a clean acquittal at the hands of this Court and the restoration of their liberty.

13. Mr. M.V. Paranjape, the learned Special Public Prosecutor, on behalf of the State, supported the decision of the lower Court on the point of convictions and sentences. He, however, submitted that the lower Court was wrong in holding that there was no motive for the accused persons to subject the deceased Geeta to a torturous death. According to him, the letters on record and the evidence of the nearer relatives of the deceased could make out a good case of ill-treatment to which Geeta was subjected for quite some time before her death. He submitted that on that background, the circumstances which were relied upon by the learned Additional Sessions Judge for holding the appellants guilty gained further assurance of the truthfulness of the prosecution case and that, therefore, the learned Additional Sessions Judge was right in convicting the appellants. He submitted that the absence of shrieks by the deceased at the relevant point of time, the sudden falling of the deceased in the bath room in flames, the presence of accused Nos. 1 and 2 near the bath room at and immediately after the occurrence of the incident, the failure on their part to make any efforts to extinguish the fire, the improbability of an educated girl, like deceased Geeta, subjecting herself to a torturous death and the condition of the scene of offence and that of the dead body as was noticed immediately after the scene of offence could go a long way in ruling out the possibilities of accidental or suicidal death and that, therefore, the only inevitable conclusion which could be arrived at would be in favour of homicidal death of the deceased at the hands of the appellants. He relied upon the observations of the Supreme Court in *Subedar Tewari Vs. State of U.P. and Others*, and also referred to on the point of adoption of similar reasoning by the Courts in 1985 C L J 147 (Delhi High Court) and (*Laxman Kumar's case*), in 1986 C L J 1651 (Andhra Pradesh High Court). He submitted that, as pointed out by the Supreme Court, the cases of bride burning deserved to be considered on a different footing and that, the accused persons in such cases should not be allowed "soft justice". According to him, the omission to examine Dr. Damale as a witness could not be fatal to the prosecution case because, as stated in police statement itself the claim of Dr. Damale was that he had heard shrieks at about 5.30 a.m. when, according to him, eye witnesses who were examined, Geeta was already set on fire and was in flames since before 5.00 a.m. or there about. He submitted that the prosecution evidence was sufficient enough to bring home the guilt to the appellant. He, therefore, prayed that he appeal be dismissed.

14. Mr. V.R. Manohar, the learned Counsel for the appellants, pointed out at the

out set of the argument that deceased Geeta and accused No. 1 were married on 24.1.1984 and that since before that accused No. 1, who was a Chemical Engineer had started his own factory for production of chemicals at Nagpur in partnership with somebody. He submitted that the family of the appellant No. 1 hailed from Arvi and, therefore, the appellant No. 1 had only to hire a small one bed room flat to accommodate himself and his wife at Nagpur. He submitted that it was not that the appellant No. 1 and his newly wedded wife were the only persons living in the said house. Accused Nos. 3 and 4, the younger brother and sister of the accused No. 1 respectively, also were lying with them in the said house. Mr. Manohar, then, submitted that instead of looking first to the evidence of the brother of the deceased and her mother, who had deposed certain facts about ill-treatment etc., it was worthwhile to look into what Geeta herself had to say in her various letters written by her since the time of her marriage. He pointed out that under Panchanama Exh. 17 as many as 39 letters of the deceased, written by her to her parents and other relatives, were seized but the prosecution had thought it fit to prove only 4 to 5 letters out of them for the reasons best known to the prosecution. He submitted that none of the letters which were proved by the prosecution, much less the letters which remained unproved before the Court in Maddema file, enabled one to think even remotely, that deceased Geeta had anything to grudge about her matrimonial life or about her in-laws. According to post-mortem examination report, the age of deceased Geeta was about 23 years. Accused No. 3, the younger brother of accused No. 1 had given his age, in his statement u/s 313 of Code of Criminal Procedure, as 23 years and accused No. 4 Sunita, the younger sister of accused No. 1, had given her age, in her statement, as 21 years. Therefore, the deceased and the aforesaid two accused were almost of the same age group and it was not that the difference in the ages of the deceased and accused Nos. 3 and 4 was so much that in an educated family, like that of accused No. 1, accused Nos. 3 and 4 should think of causing mental torture to the deceased by their behaviour or by their speeches or otherwise. Had there been Such a torture or an ill-treatment of lesser degree, the same would have definitely reflected in her letters. Mr. Manohar took us through most of the letters which were seized under Panchanama Exh. 17. None of those letters showed that Geeta had ever hinted any unhappiness in the family of her husband. Among the letters, the oldest letter appears to be one dated 22.8.1984 (Exh. 79) which was written by Geeta to her parents. On reading the whole letter, it appears that deceased Geeta was affectionately attached to all members of her family and she had assured them that her health was good and she was being treated by Dr. Deshmukh. She had conveyed that there was no reason for her parents to be anxious about her health. As already stated above, Geeta was in family way in March 1985. She had written letter Exh. 78 dated 30-3-1985 informing her parents of her ill health and begging their apology for not being able to even to write to them on account of her ill health. Even then, she assured her parents that there was no reason to worry about her health, inasmuch as, she was feeling better at the time of writing the letter. She has stated in the said letter that her parents-in-law also

were at Nagpur with her and that they were likely to leave that place within 5 or 6 days. She reported that the health of her mother-in-law was not normal due to fever. Excepting her speaking about the illnesses of the family members, there is nothing, in particular, in the said letter which could enable one to draw an inference of ill-treatment. A more eloquent letter is letter Exh. 82 dated 30-3-1985, which was written by Geeta to her dear friend Rekha, Whose marriage was settled. Very urgently she asked her friend to come over and stay with Geeta for few days. Fondly enough, she has stated that she would not attend Rekha's wedding unless, Rekha had made it a point to come to Nagpur to invite deceased Geeta herself in person. Mr. Paranjape, the learned Special Public Prosecutor, submitted that this letter conveyed a feeling that unless Rekha had come to Nagpur personally, her husband would not let Geeta go to attend the wedding of Rekha. We do not think the letter conveyed any such feeling. By letter dated 15-4-1985, Exh. 84, which was the last letter of Geeta, her father-in-law, she had been extremely courteous in inviting her father-in-law to come and live with her on the festive of Akshaya Tritiya. It appears that in response to such an urging letter, Exh. 84, accused No. 2 had come to Nagpur on 21-04-1985. This leaves us to consider only an undated scrap of paper which is at Exh. 81, which purports to be part of a letter from Geeta but the name of the addressee cannot be ascertained from the document. Mr. Paranjape, the learned Special Public Prosecutor invited our attention to the second paragraph of this piece of paper and submitted that the reference to Respected Babuji and Mrs. Bai in one said paragraph was to the parents-in-law of the deceased because, in some other letters also she had referred to them by those names. He submitted that, therefore, it was clear that this letter was sent by the deceased after her marriage. He admitted that this document did not give any indication about the period at which it was written. But he drew our attention to the last paragraph of the said letter in which Geeta and prayed to be excused for her mistakes. She had urged for an early reply to the letter. Thereafter, she had made queries about the business of her brother and had assured the addressee not to worry about anything. She requested the addressee not to write more in the reply except the information about the well being of everybody in the family. Then, she made a query as to whether or not, Sureshbhaiya (presumably accused No. 3) had come to the house at Akola. The letter concludes with a caution note that the reply should be only in the affirmative or in the negative. At the end of the letter, Geeta had left an instruction to tear out the letter as soon as it was read. On the basis of this material, Mr. Paranjape submitted that there was ample evidence to suggest that deceased Geeta was under some mental pressure in the context of her in-laws, particularly accused No. 3, and she did not want her parents even to write to her anything, in his context, except only a reply in affirmative or negative about her small query, made in the context of accused No. 3. It was submitted that it was on that count that she had left an instruction to tear the letter as soon as it was read. The very fact that the first part of the letter was not produced before the Court might suggest that there was something in that part of the letter which she probably did not want to remain intact for the information

of others. If at all, that part had contained something about the in-laws and their misbehaviour towards her, the prosecution would not have hesitated in producing that part before the Court. In the absence of that part on record we find ourselves unable to infer that part necessarily pertained to the so called misbehaviour of her in-laws towards her. In any event, if this letter was addressed to some body in the family of the parents of the deceased, the instructions to of tear the letter could also exist because, she did not want certain part of the letter to be known by other members of her parents' family. If so, as the learned advocate for the appellants submitted the said part might have related to somebody in the parent's family as well and deceased Geeta did not want that part to be known by anybody except the addressee of the letter. It is not possible to infer from this piece of paper Exh. 81 that Geeta was labouring under some mental pressure on account of the behaviour of the members of family of her in-laws towards her. Thus, none of the letters, which are part and parcel of the Muddemal articles, show that Geeta had ever complained in any of her letters that she was being subjected to ill-treatment in the family of accused persons.

15. One thing is clear from most of the letters that Geeta had been, most of the time, under a tension about her health and she had been telling to all the elders, to whom she had written some of the letters, that her health was not good or that it was better than what it was earlier. It was contended on behalf of the prosecution that deceased Geeta was not even permitted by her in laws to attend the betrothal ceremony of her own sister-Jyoti, but the letter dated 30-3-1985 Exh. 78 explained the real fact. Geeta had expressed, in that letter, her own inability to attend the function and proceeded to state that she could not write even a letter in that context her health was not good. She was apologetic for not even writing a letter, but even then,---she assured that, of late, she was keeping good health. The fact that Geeta was under an obsession on account of her ill health, which is clear from two other letters, one being letter dated 15-4-1985, Exh. 84, written to appellant No. 2 (her father-in-law) in which she had stated that she had got herself examined at the hands of the doctors just on the previous date and that, there was no reason to worry about her health, and, the second letter, dated 25-7-1984, written by her to appellant No. 2 from Akola in which she had expressed regrets, with an apology, that on account of her ill health the parents-in-law were obliged to face several mental tensions. The second letter was written, probably, when she was suffering in July 1984 from jaundice and had aborted. The letter dated 23-7-1984 (from Muddemal file) written by appellant No. 2 to the deceased, is also eloquent about the attitude of her parents-in-law towards her illness. Though Geeta herself had aborted, appellant No. 2 had asked her to be regular in her food etc., and to try to keep better health. The father-in-law (appellant No. 2) asked her, in that letter, not to worry about her health and wrote encouraging words about her intention to take further education. The fact that Geeta had reason to be anxious about her health become clear from several medical papers, which were seized by the police in

investigations under Panchanamas Exh. 16 and Exh. 18. Even, the perusal of the list of documents, seized under Panchanama Exh. 16, show that right from the time immediately after the marriage of Geeta with accused No. 1 in January 1984, Geeta had been a subject of several medical examinations. The document listed at No. 32 in Exh. 16, is a receipt dated 18-3-84 from the Pathological Laboratory from Nagpur and all other documents pertain to several dates, since then, till March, 1985. These documents shows that Geeta was examined by several doctors, from time to time, and was treated by those doctors for her ailments. In particular, our attention was drawn to a medical reported dated 17-1-1985 (in muddemal article No. 5), which showed that Geeta was examined by Dr. V.K. Gandhi of G.R. Medical College, Gwalior. While recording the history the doctor had noted the complaints as follows

- (1) Depression - 5 years,
- (2) Pain in abdomen and burning sensation - for 5 years,
- (3) The loss of appetite, loss of weight for 3 years,
- (4) Pain in exhibiter for 4 days,
- (5) Easy fatigability for 1. 1/2 month,
- (6) Pains in feet and hands and coldness for 1. 1/2 month and
- (7) Headache for 1.1/2 month etc.,

The prescription also noted hyper acidity. Dispepsia Amoebiosis etc.,

16. The learned Counsel for the appellants submitted, on the basis of this document, that Geeta had been suffering from various ailments since long before her marriage as per the history stated on aforesaid prescription and she had complained particularly of depression. Our attention was specifically invited to the fact that the said doctor had prescribed her tablets-Serpex for 15 days which are known as tranquillizers. On the basis of these documents, the learned Counsel for the appellants submitted that when Geeta was again pregnant for 3 or 4 months at about the time of her death and had been again suffering from sickness etc., there was every possibility of Geeta suffering from some sort of mental depression. Reliance was also placed, in this context, on the observations of Dr. C.K. Parikh in his treatise- "Medico-legal Postmortems in India" (at page 94), which read thus :

"Suicide, homicide or accident : Suicidal burning is relatively common among Indian women, mostly on account of domestic worries or because of the problem of dowry. In suicide, the circumstances are usually evident and perhaps the most frequent method of doing this is to soak the clothes in kerosene and then to set them on fire. It is very difficult to extinguish such flames."

It was submitted on the basis of an observation on page 91 of the same book that death might occur from mergence shock instantaneously, oir within twenty

four or fortuity eight hours from severs pain cause by extensive burns, or from injury to a vital organ from burning.

17. It was urged that Geeta had suffered one abortion in the proceeding year i.e., in 1984 and when she was again pregnant in 1985, there was every reason for her to be apprehensive of her pregnancy and to be frightful about it, particularly on the background of her long termed ailments. It was submitted that if under such a strained mental condition Geeta had thought, may be unwisely, to burn herself, that possibility could not be overlooked in the present case. The learned Special Public Prosecutor replied this argument by submitting that if Geeta was contended generally in her domestic life in the house of her husband, she was unlikely to commit suicide and that, too, in a manner which was most painful. On the background of the continued ailments, the possibility of Geeta suddenly acting in a fit of depression so as to end her life by herself could not be overruled. Such an act on her part could at the most, be unwise but certainly not totally improbable.

18. Coming then, to the evidence of P.W. 1 Rameshkumar (brother of the deceased), P.W. No. 2 Fulkuwanar (mother of the deceased) and P.W. No. 3 Shantadevi Chandak (a cousin of the deceased), who were examined on the point of so called ill-treatment to Geeta, it is to be noted that none of them has stated anything which was so serious that deceased Geeta should have felt that she was being ill-treated in the house. P.W. No. 1 Ramesh Tiwari told that at the time of the engagement of Geeta with accused No. 1 a dowry of Rs. 70,000/- was paid to accused No. 1. Assuming that it was paid, it was not even the case of Ramesh Tiwari himself that there were further demands of dowry or other sort of monitory assistance, by accused No. 1 or his relatives, from the parents of Geeta. The learned Counsel for the appellants, therefore, submitted that though this detail had appeared in his evidence, there was no reason to suppose that the allegation of the prosecution was that Geeta's death was a death brought about on account of dowry matters. According to Ramesh, Geeta was treated nicely by the accused for the first two months after her marriage and, then it was in March or April 1984 that Geeta had first gone back to her parents place. He told that Geeta was equally in good condition when she had again come to her parents a month after March 1984. He told that at that time there was abortion. This was obviously a mistake of fact because, according to other evidence, abortion had taken place some time in July 1984. It appears that, according to Ramesh, Geeta had made her first complaint about ill-treatment when she was suffering from jaundice. According to Ramesh, the complaint was only that accused Nos. 3 and 4 (brother and sister of accused No. 1) and their mother used to taunt her as she was a hostel living girl. It was also stated that she had then told that he had felt insulted at that time. He did not give any more particulars about that incident as well. Then, he proceeded to narrate how, in April 1985, Geeta was not sent to attend the betrothal ceremony and marriage of her younger sister-Jyoti. According to him, he had found Geeta nervous at her house and she had complained of harassmt at that time also. There is reason to look with

suspicion on this evidence because, in her own letter, Geeta had expressed her inability to go to the betrothal ceremony of her sister because of her ailments. Rameshkumar was very specific in admitting in his cross-examination that the deceased had never made any complaint about the accused in any of the letters sent by her to her parents. Indeed, he admitted also that before 20-3-1985 Geeta had never complained about her husband. Whatever Rameshkumar had stated in his cross-examination shows that his story about the alleged harassment to Geeta was hardly substantial so as to enable us to think that the harassment was of such a degree that ultimately accused Nos. 1 and 2 would think of burning Geeta to death. The evidence of P.W. No. 2 Fulkunwar stands on still a weekender footing. She related the incident when accused No. 1 had come to Akola to take deceased Geeta with him to Nagpur while she was suffering from jaundice. According to P.W. 2 Fulkunwar, Geeta had refused to go with accused No. 1 at that time. It is clear from the cross-examination of P.W. No. 1 Rameshkumar that the accused No. 1 wanted Geeta to come with him because, he wanted her to be treated at Nagpur at better hands. The story about the taunts was related by Fulkunwar also. She also stated that deceased was not sent for the engagement of Jyoti. Her cross-examination revealed that though the statement and supplementary statements of Fulkunwar were recorded on 5.5.1985, 11.9.1985 and 11.4.1986, in none of them she had narrated the aforesaid incident. There is, therefore, reason to suppose that the aforesaid narrations were her after thoughts. It is pertinent to note, in this context, that the father of the deceased was not put in the witness box to tell on these points though, the record shows that Geeta was also much attached to her father.

19. P.W. No. 3-Shantadevi Chandak, who is the resident of Nagpur, told that Geeta had been to her house 2 to 3 times and she was always accompanied by one or the other her family members. If so, that could really be a good sign because, it could show how the family of the accused had cared for Geeta. Shantadevi then narrated that on one of the occasions Geeta and accused No. 4 had been to the house of Shantadevi when Geeta had disclosed to Shantadevi that accused Nos. 3 and 4 did not behave properly with her, though she herself wanted to live with them nicely. According to her, the talk was interrupted when accused No. 4, who was elsewhere, came there, Assuming that this statement was correct, this could hardly prove the harassment of Geeta as was alleged. Shantadevi then proceeded to narrate that on 19.4.1985 she had a telephonic talk with Geeta, who was then alone in the house, but she did not tell that Geeta had complained of anything on that exclusive telephonic talk. In her cross-examination the witness admitted in clear terms that the deceased had never made any complaint about her husband and that whenever she had complained about accused Nos. 3 and 4, she was told by Shantadevi herself that such petty things were common in every house and that they were to be ignored. This is all the evidence that the prosecution had adduced on the point of alleged ill-treatment to Geeta. The learned Additional Sessions Judge also felt that the evidence was not satisfactory to prove the ill-treatment to Geeta. We see no

reason to take a different view of the matter in view of the facts discussed above. The prosecution has indeed failed to prove the motive alleged by them for commission of this offence.

20. Coming then, to the incident of the alleged offence itself, it was submitted by all the learned Counsel who had argued the case before us that this case depended only on circumstantial evidence and that, there was no direct evidence, as such, to prove that the appellants or any of them had set Geeta on fire. The law as regards the appreciation of circumstantial evidence is well settled by this time. The prosecution is under an obligation to establish fully each of the circumstances on which they want to rely upon. Secondly, such circumstances considered collectively must lead only to the conclusion of the guilt of the accused and, thirdly, they must exclude all hypothesis consistent with the innocence of the accused. *Hanumant Vs. The State of Madhya Pradesh*, ; *Deonandan Mishra Vs. The State of Bihar*, ; *M.G. Agarwal Vs. State of Maharashtra*, ; *Charan Singh Vs. The State of Uttar Pradesh*, ; *Chandmal and Another Vs. State of Rajasthan*, .

21. Mere suspicion, however, strong, cannot be substitute for proof of the circumstances. *Sarwan Singh Vs. The State of Punjab*, . Reasonable explanation given by the accused, though not proved, may be accepted if it is consistent with his innocence. *Raja Khima v. State of Sowrashttra*, AIR 1966 Supreme Court 217. Omission by the accused to give such explanation may, in proper cases, justify inference against him. *Deonandan Mishra Vs. The State of Bihar*, . In *Prashadi v. State of Utter Pradesh*, it was observed that if the accused denied all the circumstances which were conclusively proved or if he gave false explanation about the circumstances proved against him, an inference against him may in some cases, be justified. However, in a recent ruling---*S.D. Soni v. State of Gujrat* 1991 C L J 330 , the Supreme Court pointed out that the law laid down in *Sharad Sarada v. State of Maharashtra* 1984(4) S.C. 116; 1985(1) Bom.C.R. 208 , was to the effect that the prosecution must stand or fall on its own legs and it can not derive any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. In *Hanumant Vs. The State of Madhya Pradesh*, , the Supreme Court had already sounded a caution word for the courts about the danger in cases depending upon circumstantial evidence, namely that conjecture or suspicion might take the place of legal proof and---"The Mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole." This caution note was sounded on the basis of observation in *Reg. v. Hodge* (1838) 2 Lewin 227.

22. The learned Special Public Prosecutor relied upon the decisions in *K.B. Doddarajjiappa and Others Vs. State of Karnataka and Others*, , *Surendrakumar v. State Delhi Administration* 1987 C L J 537; *Roshanlal v. State* 1987 C L J 1475; *G. Veerbrahman v. State of Andhra Pradesh* 1987 C L J 1651 , and *Nagarajan and Others Vs. Annammal*, and submitted that in cases of murders of wives by

burning the Supreme Court had since emphasised that the criminal justice system must equally respond to the needs and notions of the society in the context of "dowry deaths". It was pointed out that the Supreme Court that had insisted upon the investigating machinery displaying a live concern after sharpening their wits and penetrate into every direct corner and collect all the evidence. As regards the Court, the Supreme Court expected that the Court also must display greater sensibility to criminality and avoid on all counts "soft justice". Nonetheless in none of these rulings the Supreme Court had said or had suggested that the other courts should cross the barriers which are indicated by the said Court, as summed up in the last preceding paragraph.

23. The learned Counsel for the appellants then invited our attention to the Supreme Court ruling in *Hate Singh Bhagat Singh Vs. State of Madhya Bharat, In Re: Narsiah and Others*, . The former ruling pertains to the weight to be attached to a statement of the accused recorded u/s 342 of the Code of Criminal Procedure, 1989 and the second ruling referred to the act thereof after the amendment made to the said Code by insertion of section 342-A. In *Hate Singh*'s case the Supreme Court pointed out that the statements of accused persons recorded under sections 208, 209 and 342 were amongst most important matters to be considered at a trial. It was emphasized that it has to be remembered that in this country an accused person was not allowed to enter the box speak on oath in his own defence and this would operate for the protection of the accused in some cases. But, experience elsewhere had showed that it could also be a powerful and impressive weapon of defence in the hands of an innocent man. It was, therefore, stated that the statement of the accused recorded by the committing Magistrate and the Sessions Judge were intended in India to take the place of what in England and in America he would be free in his state in his own way in the witness box. Pointing out that such statements had to be received in evidence and treated as evidence to be duly considered at the trial, the Supreme Court then proceeded to observe that this meant that such statements must be true like in every piece of evidence coming from the mouth of a witness and matter in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Not only this, but it was pointed out that because of the presumption of innocence in favour of the accused, even when he was not in a position to prove the truth of his story, his version should be accepted if it was reasonable and if it accorded with probabilities, unless the prosecution could prove, beyond reasonable doubt, that it was false. In *Narsiah*'s case it was pointed out that the insertion of section 342-A made no change in law. The present provision contained in section 313 of Code of Criminal Procedure, 1898 was almost identical and it was, therefore, submitted that the aforesaid position of law as explained by the courts was still prevailing. It was, therefore, submitted that in the present case, whenever reference is to be made to the circumstances relied upon by the prosecution it was also incumbent upon the Court to look to the explanation given by the accused and to find out whether or not, the said explanation was

reasonable, probable and, therefore, acceptable in the circumstances of the case.

24. Having said so much about the law, the evidence of P.W. No. 5 Ushatai Koyal, P.W. No. 6 Neeta Koyal (both neighbours), P.W. No. 7 Rashila Pathak, P.W. No. 8 Pranolal Pathak (landlady and landlord of the accused No. 1) and P.W. No. 9 Shashidharan Nair (a passer by) may be considered. P.W. Nos. 5 and 6 Ushatai and her daughter-in-law Neeta lived in the part of the twin bungalow which was adjoining to the part of it owned by P.W. No. 7 and 8-Rashila and Pranolal Pathak. All of these four witnesses were next door neighbours of accused No. 1 and deceased Geeta. The another feature of their evidence is that none of them has told that they had ever heard of any quarrels between Geeta and her husband or for that matter, in their family. P.W. No. 5 Ushatai, P.W. No. 7 Rashila, who being women, would be ordinarily expected at their residences for the major part of every day, particularly told that they had never heard of any quarrel between deceased and family members at any time. There appeared, therefore, no reason for the said witnesses to think that deceased Geeta would be burnt alive by the inmates of her house. P.W. No. 5 Ushatai told that on the relevant night she herself and her daughter-in-law P.W. No. 6 Neeta were sleeping on the terrace of their part of the bungalow, and that at about 5.30 a.m.. she woke up on hearing some noise (though the word used in English deposition is "commotion", the words used in Marathi deposition are "Kahi Tari Aawaj"). She told that, then, she went to the Bungalow of Pathak in the portion where the accused were residing and had seen that the deceased was on fire in her bath room. She told that she saw the deceased at that place from the bed-room as the door of the bed room was open. She proved that all the accused were present in the house at that time. She did not describe the incident more. Her cross-examination revealed that she was uncertain as to whether she had seen the deceased burning, from the kitchen or from the bed room. According to her, she was there only for a minute, but many persons had already gathered in the open space adjoining the house. She did not remember whether or not, there were some persons in a passage in between the kitchen and the bed room on one side and the bath room and latrine on the other. The witness gave the time of her arrival to the scene of offence at about 5.30 a.m. In all probability she was vague about the timings also. P.W. No. 6 Neeta told that at about 5.30 a.m. she had heard on the terrace the noise "Jal Gai, Jal Gai" (she is on fire) uttered by some male or gents. She did not specify accused Nos. 1 to 3 in this context. After trying first to ascertain what had happened, she and her husband had, according to the witness, come down stairs. She told that she had been to the drawing room or the deceased and had seen from there that the door of the bath room was open and that the deceased was lying on the floor of the bath room. She told that, within 15 to 20 minutes, the Fire Brigade had come there and then, she had returned. She did not tell in specific words that she had seen the deceased in flames nor had she stated that the deceased was in flames till the arrival of the Fire Brigade. Her cross-examination revealed that there was a telephone connection in her house and accused No. 3 Suresh had gone to her house to make telephone calls. In her

cross-examination certain contradictions from her police statement were brought on record and they were, in course of time, proved at Exh. 142. As per those contradictions, it appears that her story given in the police statement was to the effect that she had come down stairs at about 5.00 a.m. and that at that very time accused No. 3 Suresh had gone to her house for telephone. She had told in the police statement that Suresh had informed the Fire Brigade and police control room on the telephone that his Bhabhi was burning and that, therefore, she had come to know that the daughter-in-law of Gandhi was burning. Her version in the police statement was only to the effect that, at about that time, the Fire Brigade had come and she had then left the place. The contradictions proved from her police statement are material for showing that the time of seeing the incident of the alleged offence by the witness was at about 5.00 a.m., that at that time Suresh has informed the police and the Fire Brigade about the incident and that the Fire Brigade had come there immediately. In her version before the Court she had postponed the whole thing at and after 5.30 a.m. This is a material change of considerable consequence when we compare this with the evidence of another important witness, namely, P.W. No. 9 Shashidharan. It is pertinent to note that P.W. No. 6 Neeta had not even referred to the presence of accused Nos. 1 and 2 at the spot of the alleged offence. Therefore, there was no question of her saying about their actions. Similar was the case in respect of her mother-in-law P.W. No. 5 Ushatai, who was also silent on the point. P.W. No. 7 Rashila, the land-lady of the accused, was also sleeping, during the relevant night, on the terrace of her part of the bungalow and accused Nos. 3 and 4 also were sleeping on the same terrace during the night. She told that at about 5.30 a.m., on 22-5-1985, she had heard a cry raised by accused No. 2 and had come down to see what had happened. She first went to her prayer room, then to her bath room and then to the kitchen of the house of accused No. 1. She claimed to have seen the deceased burning in the bath room and the door of the bath room open. She told that deceased was lying on the floor of the bath room, but she did not tell that she was yet in flames. In reply to the question she told that the cries raised by accused No. 2 were loud cries. She was not very certain as to whether or not, accused Nos. 3 and 4 also had come down stairs alongwith her. While deposing in the Court; she was not certain whether or not accused Nos. 3 and 4 had woke up, like her, on hearing the cry raised by accused No. 2, but that appeared to be her statement in the police statement as per the contradictions proved at Exh. 153. Like the earlier two witnesses, she did not refer to the presence of accused No. 1 in the house much less, to the actions, if any, in which he was engaged. About accused No. 2 she told only of the cry but nothing more. Her husband-P.W. No. 8 Pranalal was sleeping in the Court-yard near the gate of the bungalow. According to him, he woke up at about 30 a.m., opened the kitchen of his house and had, then, noticed from there some smoke coming from the rear side of the block. He also told that he had heard some cries raised. Then, he went to the house of the accused and found accused No. 2 sitting in the drawing room and shedding tears. He told that he, then, went to the bath room and saw the deceased burnt up to the extent of 2/3rds of her body. According to

him, people gathered thereafter at the block and the Fire Brigade had come at about 5.30 a.m. Like other witnesses, this witness also was very uncertain about the timings given by him because, the entire incident has been postponed to 5.30 a.m. and thereafter. Again, like other witnesses, this witness also did not refer to the presence of accused no. 1, much less, to the acts, if any, in which he was involved at the relevant point of time. His cross-examination revealed that in the police statement he had narrated that he had woke up at about 6.00 a.m. or so.

25. The last witness on the point was P.W. No. 9 Shashidharan, a Junior Engineer, living in the neighbouring locality, who had heard the siren of Fire Brigade early in the morning and had, with curiosity, followed the same. He told that it was at about 5.50 a.m. that he heard the siren of the Fire Brigade and had, then, proceeded to follow the same on his scooter. He told that then he came near the scene of the alleged offence. According to him, the flames in which deceased was burning were then above 2.1/2 feet in height and after he had seen those flames, the Fire Brigade had started extinguishing them. In his cross-examination he told that an electric heater was seen kept in the passage adjoining the bath room, that the same was detached from its connection and the wire meant for connecting the heater was found burnt. This witness also was silent about the presence of accused Nos. 1 to 4 and more so about the activities, if any, in which they were involved at the relevant point of time. This witness had postponed the entire incident to 5.50 a.m. or so. According to the prosecution story, the deceased was set on fire at about 5.50 a.m. or slightly there before. The evidence of the aforesaid five witnesses, if at all, it is to be read liberally, would mean, therefore, that the deceased was burning in flames for such a long time. The other inference that is possible is that all the witnesses have been making some Confusion about the timings and that, possibly they had seen the incident soon after the deceased had caught fire. It is necessary to refer to certain documents to fix up the timings.

26. The prosecution produced, at Exh. 29, a copy of extract from the occurrence register maintained by the Police Control Room, Nagpur city on 22.4.1985. The entry shows that Suresh Gandhi (accused No. 3) had reported, at about 5.14 a.m., that one woman had died because of fire at Laxminagar Plot No. E-10, near 8th road square. Another extract, at Exh. 31, reproduced the aforesaid entry and stated further that P.S.I. Thakur had reached Laxminagar at 5.40 but could not trace the spot. Entry at 5.50 a.m. was that Bardi mobile van had reached the spot. Entry at 5.58 a.m. states that Police Head Constable Bardi Police Station was already on the spot and P.S.I. Simhel of Bardi Police Station was directed to go to the spot. Entry at 6.00 a.m. was that P.S.I. Simhel and P.I. Limaye of Ambazari had reached the spot and a lady constable was asked to be deputed to the spot. Name of the deceased Geeta was mentioned at the end of extract. Yet another extract containing entries from 5.15 a.m. onwards upto 8.06 a.m., is produced which included the aforesaid entries and stated further steps taken in the matter. Thus, the police record shows that the information regarding the

occurrence was received by the police control room at 5.14 a.m. on telephone message given by accused No. 3 Suresh Gandhi. The entry did neither speak of the cause of fire nor even of whether or not, the same was accidental or suicidal. Two other documents, purporting to be the record of the Fire Brigade Station, are produced at Exh.. 24 and 25. Exh. 24 is the extract of the daily Roznama maintained at the Fire Brigade Station of the Nagpur Municipal Corporation and it stated that at 5.44 a.m., a message was received from telephone No. 26688 from Sureshkumar Gandhi that one woman had burnt herself by pouring kerosene on her person and there was likelihood of the house itself catching fire. Exh. 25 is the report of one R.B. Pandhare in connection with the movement of the vehicle No. MTG 3625, which stated that the call of Suresh Gandhi was received at 5.44 a.m. Unlike Exh. 24, it stated that Mrs. Geeta Gandhi had got burnt in the bath room of her house and a window of the room also was burnt alongwith her. The cause of fire was stated to be unknown. The distance between the Fire Brigade Station and the spot was stated to be 6 Kms and the time of arrival at the spot was stated to be 5.55 a.m. The time required for extinguishing the fire (Pumping hours) is stated to be 15 minutes. If these two documents are compared with each other on the background of evidence of P.W. No. 6 Neeta Koyal, who had stated that accused No. 3 had telephoned from her house, it is difficult to reconcile the two entries with each other. It was not the case of witness Neeta Koyal that accused No. 3 was in her house right from 5.14 a.m. to 5.44 a.m. It was not her case also that accused No. 3 had come to her house twice for making telephone calls. If both of the telephones, one to the police control room and other to the fire brigade, were made simultaneously, there is reason to suppose that the entries made in the fire brigade register recording the time at which the phone message was received there, was not correct. Again, as regards the particulars of the cause of fire also the two documents Exhs. 24 and 25, forming record of the fire brigade, are not consistent with each other. There is, therefore, reason to suppose that the entry in the fire brigade was not proved to have been made correctly and timely. If so, the evidentially value of that document is certainly weakened.

27. Now, if the telephone message was given from the house of witness Neeta at about 5.14 a.m. the evidence of Neeta and her mother-in-law-P.W. 5 Ushatai about the timing at which they had woke up and gone to the scene of the offence also is not correct. For the same reason, the evidence of P.W. 7 Rashila and her husband P.W. No. 8 Pranolal about the timing at which they had reached the scene of offence also does not appear to be correct. In the absence of the evidence of P.W. No. 5 Ushatai, P.W. No. 6, Neeta, P.W. No. 7 Rashila and P.W. No. 8 Pranolal on the point that Geeta was seen in flames by them, it is difficult to accept the evidence of P.W. No. 9 Shashidharan, who claimed to have reached the scene of offence at about 5.50 a.m., or soon thereafter, and to have seen the body of the deceased burning in flames which were 2.1/2 feet in height. If at all, Geeta had remained in flames for a period of about 45 minutes or so, her entire body would have sustained serious burns, so much so that the body would have been

charred completely as was the case in respect of her leftleg. The Inquest report and the post mortem examination notes show that Geeta had suffered burns on her left leg, the middle portion of the body below 8th rib and the lower part of right leg. The upper part of the body did not appear burnt to the extent to which they were seen on the lower part of the body. This condition of the dead body also appeared irreconcilable with the evidence to the effect that the dead body was burning for a period of 45 minutes. Thus, there is reason to suppose that all the five alleged eye witnesses had not given before the Court the correct and complete account of what had happened. This is not to say that none of those witnesses had reached the spot of the incident but it is to say that the account given by them, can not be depended upon very safely as a complete and correct account of what the witnesses had seen and the time at which they had seen it. The circumstance that none of the witnesses had referred to the presence of accused No. 1, and much less his acts, if any, at the relevant point of time and further, that only P.W. No. 8 Pranalal told about the presence of accused No. 2 shedding tears in the living room, assumes some significance. It is also significant to note that none of the aforesaid witnesses have stated that they had heard any shrieks of the deceased. It could be that the witnesses were not asked any question on those points while recording their examinations-in-chief and that, therefore, they had not narrated the particulars on those point.

28. As regards the shrieks of the deceased, it was one of the main contentions of the learned Special Public Prosecutor that as the witnesses were silent on the point, there were no shrieks at all. As already stated above, if the witnesses, who were deposing before the Court several years after the incident, were not specifically questioned on the point, they were not likely to state anything about the shrieks. The learned Counsel for the appellants relied upon the decision in *Abdul Latif v. State of U.P* 1978 S.C.C.122, and submitted that it was open to the appellate Court to peruse, in the interest of justice, the police statements of the witnesses, who were not examined before the Court. He then, took us through the police statement and the supplementary statement, dated 29.4.1985 and 11.9.1985 respectively, in which he had stated that he had gone out for a walk at about 5.00 a.m. and had noticed smoke coming out of a window of a flat which was at the back side of his flat. The witness had stated that he did not suspect that any serious incident had taken place and that therefore, he had not gone to that place. But he was clear in telling that he had heard shrieks, there after, of a woman. In the supplementary statement also he had confirmed his earlier version. The learned Counsel for the appellants was very much critical of the manner of conducting the prosecution and of suppressing the evidence of this material witness. He drew our attention to the Panchanama of the scene of offence which recorded as a boundary mark of the scene of the offence, the residence of Dr. Damale on one side. The learned Counsel contended that the evidence of this witness was suppressed only because this was the main and natural witness who had spoken of hearing the shrieks from the house of the accused. The learned Special Public Prosecutor tried to explain this by contending

that this witness was not examined because on his own admission he had not gone to the scene of offence, and secondly because, in the supplementary statement he had stated he had fallen off his house for a walk at about 5.30 a.m. and had returned home at about 6.15 a.m. In making this submission the fact is lost sight that the witness had confirmed even in the supplementary statement that he had woke up at 5.00 a.m. and was preparing himself for going out for a walk. Again, the explanation offered by the learned Special Public Prosecutor that because of the timing given by the witness, he was not examined is also weak in itself because all the witnesses, who were examined before the Court, had also stated that they had arrived on the scene of the offence at or after 5.30 a.m. There was, therefore, much substance in the criticism levelled by the learned Counsel for the appellants on the point that the evidence of Dr. Damale was suppressed from the Court. He submitted, therefore, that an inference adverse to the prosecution had to be drawn in view of the elimination of the evidence of a material witness. He was right in submitting that, therefore, the circumstance that there were no shrieks from Geeta after she had caught fire could not be a circumstance to be relied upon by the prosecution or by the Court for any purposes, much less, for the purposes of showing that it was a speaking circumstance about the manner in which Geeta was put to death. The learned Additional Sessions Judge had erroneously relied upon the circumstance of absence of shrieks and had jumped at a conclusion, quite hazardously, that the circumstance could prove that the deceased was incapacitated before she was set on fire by the appellants. In our view, no such inference could be drawn on the basis of the aforesaid circumstance in view of the considerations discussed above.

29. Another important incriminating circumstance which was relied upon by the prosecution was absence of evidence about the activities of the appellants in the context of extinguishing the fire. Indeed, a police statement dated 22-4-1985 of accused No. 3 was produced and got proved at Exh. 139. In that statement he had stated that at about 5.00 or 5.30 a.m. he had come down stairs from the terrace on hearing a cry raised by his father and had found that his sister-in-law was burning in the bath room. He told that he had, therefore, informed the police control room and the fire brigade about it. Accused No. 1 had stated in his written statement that it was he himself, who asked accused No. 3 Suresh to send telephone messages to fire brigade, police etc. The evidence of P.W. No. 7 Neeta and the evidence referred to above in the entries taken at the police control room show that accused No. 3 did call the police at about 5.14. a.m. Under these circumstances, there was no reason to look with suspicion upon the statement of accused No. 1 to the effect that he had instructed the accused No. 3 Suresh to report the incident to the police and fire brigade. It was urged by the learned Special Public Prosecutor that none of the witnesses had stated that accused Nos. 1 to 3, or any one of them, had made any efforts to extinguish the fire. As already stated above, if no question was asked to the witnesses on the point, the witnesses were not expected to volunteer such an information.

Secondly, there is no reason to suppose that there was any water available immediately or that Geeta was in such a condition that the fire could be extinguished by pouring water, The Panchanama of the scene of the offence Exh. 141 shows that there were two plastic buckets in the bath room itself and they were found moulded. The Panchanama does not state that there was water in them. Therefore, there was no question of any of the accused entering the bath room to pick up the buckets and to pour water, if any, containing in them. According to the accused persons, the water tap also was in the bath room itself and, therefore, it became impossible for them to take water from that tap. In reply to this, the learned Special Public Prosecutor submitted that there was also a tap in the wash basin, which was in the passage, and the accused persons could have taken water from that tap. There is, however, no evidence on record to show that tap had running water at the relevant point of time. It was, then, contended that in one of the photographs, Exh. 113, a clay pot for storing water is seen in the kitchen. It was submitted that the water from that clay pot could have used for extinguishing the fire. There is no evidence on record to show that clay pot also contained water, much less that if at all there was water, that was sufficient to extinguish the fire. No question was asked on this point to any of the witnesses. The learned Counsel for the appellants submitted that even in the statement u/s 313 of the Code of Criminal Procedure this circumstance was not put to the accused persons as an incriminating circumstances and that, therefore, the said circumstance could not be used as an incriminating circumstance. Accused No. 1 had stated in his statement u/s 313 of Code of Criminal Procedure that he had rushed immediately to the bed room to see if there was any water in the bucket which was near a cooler. He told that he found no water in that bucket and had, therefore, become helpless. There is no evidence that there was any other big container, or a big utensil, in the house which could be used for bringing water from outside. It is most important to note, in this context, that all the five alleged eye witnesses, who had reached the scene of offence, also did not claim that on seeing Geeta burning they, or any of them, had thought of bringing water from outside and pouring it on the person of the deceased. If all, water was available in the premises, the witnesses would have, at least out of compassion, tried to bring some water to pour on the person of the deceased. It is to be noted, in this context, that out of five alleged eye witnesses, four were next door neighbours of accused No. 1 and the fifth, namely, Shashidharan was at least a resident of the same locality. The inaction of the witnesses in this respect also may suggest lack of adequate storage of water or the availability of the water in the vicinity. The learned Counsel for the appellants was right in making a grievance that when no question on this alleged inactivity of the accused was put to the accused in their statements u/s 313 of the Code of Criminal Procedure, the said circumstances was wrongly and illegally used by the lower Court as an incriminating circumstance against the accused. It was, then, submitted by the learned Special Public Prosecutor that the accused persons could have used some blanket or Dari for extinguishing the fire. It may be presumed that such articles could be available in the house but it is certainly

not known whether or not, the fire was such as could have been thought to be one of that category which could be extinguished by use of Dari or blanket. The learned Counsel for the appellants then pointed out from the statement of accused No. 2 that he was an aged man of about 60 years and according to him, he had pulled out from the bath room the heater which was connected to the power supply. P.W. No. 9 Shashidharan had admitted that such a heater with burnt wire was found kept on the floor in the passage abutting the bath room. Photograph Exh. 107 shows that it was a boiler type heater. It is not mentioned even in the Panchanama of the scene of offence that there was any water in that heater at the relevant point of time or at the time of drawing of the Panchanama of the scene of offence.

30. P.W. No. 15 Dr. Goyanki had examined the person of accused No. 2 on 22.4.1985 at the instance of the police and he told that he had noticed one bleb over the right index finger, palm aspect, 1/2 cm x 1/2 cm and another bleb over the right index finger base, lateral aspect, 1/2 cm x 1/2 cm. He opined that such blebs were possible if that portion of the body had come in contact with some hot substance (not fire itself). In his statement u/s 313 of Code of Criminal Procedure, accused No. 2-appellant No. 2 had admitted in reply to Question No. 13 that there were such injuries on his person when he was examined by Dr. Goyanki. This was a circumstance which could corroborate the defence version that accused No. 2 had pulled out from the bath room the heater so as to disconnect it from the power point. When there is no evidence to the contrary adduced by the prosecution, there is no reason to not to accept the aforesaid explanation offered by accused No. 2-appellant No. 2. Thus, both appellants have tried to explain in their own way the steps that they had taken.

31. Another strong circumstance relied upon by the learned Special Public Prosecutor was the finding of traces of kerosene on the burnt bony pieces and the debris which were seized from the scene of offence, immediately in the morning after the occurrence of the incident. The said pieces were sent to the Chemical Analyser and the report of the Chemical Analyser was received vide Exh. No. 1 before the Chemical Analyser was "partly burnt bony pieces and debris wrapped in a paper." Exh. No. 2 was a piece of cloth and Exh. was "ashes and debris wrapped in a paper put in a packet." The Chemical Analyser reported that articles Exhs. 1 and 3 were positive in detection of kerosene.

32. P.W. No. 18-Dr. Wase was examined by the prosecution in this context and in his examination-in-chief, he had stated-"If the kerosene is poured before a person is burnt, to get kerosene on the burnt bones is unlikely. It is possible that kerosene might have been poured on the person of the deceased while burning". The learned trial Judge was influenced by this opinion and it appears that he was of the view that the deceased was set on fire with kerosene and kerosene was being continuously poured on her person while she was in the process of burning. The learned Special Public Prosecutor also argued on those lines before us and urged that this was a speaking circumstance showing the intentions of the

accused to kill the deceased by burning. We do not think that this was a very strong circumstance in favour of the prosecution because, while arriving at the aforesaid conclusion the learned Additional Sessions Judge appeared to have lost sight of the fact that the bony pieces were collected and wrapped in a piece of paper along with the remains of debris which were found on the scene of offence. At the cost of repetition, we may note here the description of Exh. 1 as it was presented before the Chemical Analyser and as it was described in that report of Chemical Analyser at Exh. 40. The description was---"Partly burnt bony pieces and debris wrapped in paper put in a packet". It was not in dispute that the debris did contain the kerosene. Therefore, it was very likely that the kerosene contents in the debris were absorbed by the bony pieces which were packed along with the debris. The second reason is that the identity of this article allegedly seized on the scene of offence with the article, which was at Exh. 1 before the Chemical Analyser, has not been established satisfactorily by the prosecution. According to the prosecution, the said article was seized on the date of the offence i.e., on 22-4-1985. The Duty Card of Police Constable Thakurprasad, Exh. 34, shows in column 2 that he was directed to carry the burnt pieces of let bones of deceased Geeta Gandhi in Death No. 18/85 to L.M.J. office. At the foot of the said Pass, there is an endorsement made by the said constable to state that he had been to the L.M.J. office on that day, but, as he did not meet anybody there, he had returned the bones of the deceased which could not be deposited there. This report is dated 23.4.1985 at 12.55 hours. On 22.5.1985, however, a letter Exh. 36 was sent by Police Inspector Patil to L.M.J. Dr. Wase and Dr. Kureshi stating therein that on 25.4.1985 P.C. Shoukatali was delivered but till the date of the letter i.e., 22.5.1985, no report was again sent to the office of L.M.J. alongwith the pieces of bones of deceased Geeta Gandhi and a report was sought. The letter states, further, that on that date, complete post mortem report was received on examination of the pieces of bones. An early report in the matter was, therefore, sought. Dr. Wase told in his deposition that he had received the said exhibit on 25-6-1985 and examined them on 16-7-1985. It is not known, for want of evidence, where the packet containing bones was lying all the time from 23-4-1985 i.e., the date on which police constable Thakurprasad had reported to have returned the bones to the Police Sub Inspector (vide Exh. 34) to 25-6-1985 i.e., the date on which Dr. Wase claimed to have received the packet. Again, according to the Chemical Analyser's letter at Exh. 40, the Chemical Analyser had received the package alongwith the letter dated 23.7.1985 from Police Inspector, Detection Branch, Nagpur city on 26-7-1985. Again, due to absence of evidence on the point, it is not known where the package was lying in the intervening period. The learned Counsel for the appellants then submitted, further, that the prosecution did not examine any witness who had carried the Muddemal articles referred to in report Exh. 40 to the office of the Chemical Analyser. Even, the Duty Certificate of police constable Shoukatali B. No. 2889, whose name was referred to in the letter, nor any acknowledgment of L.M.J., addressee of the letter dated 21.5.1985, was produced on record. It was, therefore, submitted that the

custody of the bones from the date of offence upto the date on which the Chemical Analyser received the articles (as stated in Exh. 40) stands unexplained. He submitted, not with force, that when there were so many missing links and lacunae in proof of identity of Muddemal articles, the aforesaid circumstances could hardly have been used by the trial Court for drawing the inference which it did. The learned Special Public Prosecutor could hardly offer any explanation when he was confronted with the aforesaid problem. We think, therefore, that the objection taken by the learned Counsel for the appellants must be sustained and the aforesaid circumstance could hardly be used as an incriminating circumstance against the accused, much less, for drawing the inference of the type that was sought before us to be drawn.

33. One theory made out by the prosecution that the accused persons had poured incessantly and continuously kerosene on the person of the deceased while she was in the burning process, can not be sustained for other reasons also. In the first place, all the alleged eye witnesses had reached the scene of offence immediately on hearing the cries raised from the house of the accused. None of them told that the accused persons were seen pouring kerosene. Again, none of them told that any kerosene traces were found outside the bath room or in the passage abutting the bath room. The spot Panchanama, Exh. 141, which was drawn in early morning thereafter, did not refer to any traces of kerosene outside the bathroom or anywhere else in the house. It did not state that any small container smelling kerosene was found either in the bath room or outside in any part of the house. The kerosene can was found, according to the spot Panchanama, in the bath room itself beneath the body of the deceased. These circumstances destroy completely the theory set up by the prosecution that in the process of burning, kerosene was being poured on the person of the deceased. Our attention was then drawn by the learned Special Public Prosecutor to the nature of injuries sustained by the deceased on the lower right leg and on the entire left leg of the deceased. It was submitted that the very fact that those parts of the body were totally burnt, leaving no traces of skin, legament, flesh etc., indicate that a tremendous heat generated in the burning process and that the same could not have been generated unless the kerosene was being poured again and again on the person of the deceased. Our attention was then invited to the opinion given by Dr. Wase in his deposition, which read as follows : "There was carbonisation of bones. It was suggesting that the legs were burning in a closed room. The amount of heat was high. The time of burning limb was sufficiently prolonged i.e., approximately more, than 2 hours". These two circumstances were relied upon in support of the theory of burning the body of the deceased by pouring kerosene again and again. The very fact that the Medical Officer also had opined that the burning had taken place in a closed room, goes counter to the prosecution story. Again, there are some other circumstances in the evidence on record which also go counter to that theory. A Panchanama of seizure of articles drawn on 30-4-1985 Exh. 149 contained the following description of the situation as it obtained in the bath room in question.

"The above spot is the bath room of the house of Shri Gandhi, who is the tenant of Pranal Pathak Plot No. E-10, Laxminagar. The said bath room is facing the south. It is admeasuring 5" x 4". One ""Chitakani" (fixture) is affixed in the middle of the door. It is described as under:

Its length is 4 inches. On it there is one inch long staple and 2.3/4 inch long rod. This rod is fixed in the socket of the said "Chitkani", but only 1/4 inch portion of it is coming out of the socket.

This portion describes the bolt which was fixed at the middle portion of the door of the bath room from inside. The said bolt was before us in Muddemal articles and we inspected the same. It was very tight and it could move forward and backward only to the extent of 1/4th inch. The both was in the same condition when it was shown to P.W. No. 23 Panch-Pandhare. In the spot Panchanama Exh. 141 also the description of the bolt and the socket appeared. The description is reads thus :

"An iron hook (latch) for fixing the bolt, which is fixed to the frame of the door from inside the bath room appears to be loose. The outer portion of about 3/4 centimeter is found to be outside the door, and that much portion (of the bolt) appears to be white while rest of the portion has become black due to smoke."

The vernacular version of this Panchanama is more specific in stating that the socket in which the bolt was normally to be fixed, for latching the door from inside, had become loose. (Konda Dhila Zhala Aahe"-). This circumstances suggests that the door was closed from inside and was latched as much as it could be done. The loose socket suggests that the force was applied from outside to open the door on apprehension of the emergency in the bath room, from which the smoke was coming out. This supports the defence version, particularly of accused No. 2, that the accused No. 2 had applied force to have the door opened and had then found Geeta burning.

34. The other circumstances, which go counter to the aforesaid prosecution theory, go to show that there was no reason what-so-ever to have any animus against the deceased and to kill her in the horrible manner in which she had met the death. At the cost of repetition it may be stated that immediately after the marriage, the in-laws had allowed the newly wedded daughter-in-law Geeta to continue to live in the hostel and to complete her studies. After she had completed studies, her father-in-law had written her a letter, encouraging her to take further education. She was working with P.W. No. 13 Dr. Kane for her further training in Pathology. P.W. No. 13 Dr. Kane has stated in his deposition that accused Nos. 1 to 3 used to come to his dispensary to drop Geeta there. It shows that the family did not want Geeta to go all alone to the place of her work. The alleged eye witnesses P.W. No. 5 to P.W. No. 9, who were the next door neighbours of the deceased, did not tell that they had ever heard any quarrel between husband and wife or had come to know of any differences between them. Immediately after the fateful incident, accused No. 3 had, may be at the

instance of accused No. 1, reported the incident to the police and had solicitude the help of the fire brigade for extinguishing the fire. Accused No. 2 was said to have been found in the sitting room at that time shedding tears, and blaming his misfortune for having lost "Laxmi", the eldest daughter-in-law in the family. Accused No. 2 had arrived at Nagpur just in the previous evening and that, too, with a good gift, namely, a gas cylinder and a cooking range, in the absence of which, the daughter-in-law was facing the fuel problem. All these circumstances show that Geeta was being treated affectionately in the family. For convicting the accused No. 2, the learned Additional Sessions Judge has given a very curious reasoning which stuns us with surprise. It reads thus :

"I agree that deceased wrote a letter to her father-in-law accused No. 2 on 15-4-85. From that letter, at the most, it can be concluded that accused No. 2 was called by deceased. It does not mean that there was no act on the part of accused No. 2 in the offence. Considering the injuries on the person of deceased, it is highly impossible that it is act of one person. Admittedly, accused Nos. 1 and 2 were on the ground floor. So the letter which is at Exh. 54 will not prove the innocence of accused No. 2."

In our opinion, the learned Additional Sessions Judge has done exactly what the Supreme Court had cautioned the courts against, namely, he had allowed his mind to apt to adapt the circumstances for the purpose of holding that the guilt was proved. We can hardly sustain such a reasoning. Indeed, the learned Counsel for the appellants took us through several passages in the judgment to show how unreasonably the evidence was dealt by the trial Court. We do not think it necessary to dwell much upon the adverse commentary made by the learned Counsel for the appellants on the judgment of the lower Court.

35. To sum up, the learned Special Public Prosecutor had urged before us seven antecedent circumstances, four concurrent circumstances and two subsequent circumstances to submit that the guilt of the accused was brought to book. Those circumstances were :

Antecedent Circumstances :

- (1) Correspondence showed deep attachment of Geeta to her own life and her relatives. She had, therefore, no reason to commit suicide;
- (2) She was looking forward for a career in Pathology and was spending time at Dr. Kane's Laboratory for that purpose every day;
- (3) She was ailing but her illness was not such as would have driven her to suicide;
- (4) She was pregnant and she had no reason to lose her own life as well as that of the child that was expected in the family;
- (5) There was nothing to show that she was mentally imbalanced in the week before the incident during which she had not attended the laboratory of Dr. Kane;

(6) There was some pressure on her mind in the context of her in-laws and

(7) Only accused and the deceased were in the house during the night of the incident.

Concurrent Circumstances:

(1) Deceased was found in the bath room;

(2) Absence of shrieks;

(3) Extensive burns on the body could not have been caused in accidental fire. Such burns would have required great intensity of heat which could occur only by pouring of kerosene again and again;

(4) She was burnt from all sides and all her clothes except a small piece of Saree were found burnt.

Subsequent Circumstances :

(1) Conduct of the accused, namely, the accused No. 1 did not do anything and accused No. 2 had raised only a cry. Though there was tap in the basin, the same was not used for taking water for extinguishing the fire. No other method was adopted for extinguishing the fire;

(2) The deceased was highly educated and she would not have chosen such a painful method for killing herself.

We have considered above all the aforesaid circumstances and we have come to the conclusion that many of the circumstances were not established and those which were established, could not necessarily be a conclusive pointer to the guilt of the present appellants. Under these circumstances, it is needless for us to go into the realm of conjecture as to whether or not, the death was suicidal or accidental. The accused persons contended that they also did not know how the fire was caused so as to bring about the death of the deceased. Considering the facts and circumstances discussed so far, we, therefore, hold that the guilt for murder of Geeta is not brought home to the accused No. 1 and 2- Appellants No. 1 and 2. There is much less evidence for the offence punishable u/s 201 read with section 34 of the Indian Penal Code, for which also the appellants were convicted by the learned trial Judge. The appeal must succeed.

36. Accordingly, we allow the appeal, set aside the convictions and the sentences awarded to the appellants and to proceed to acquit them. We direct that the appellants be set at liberty, if not required in any other case. Fine, if any, paid by the appellants shall be refunded to them.