
(2019) 12 BOM CK 0083

In the Bombay High Court

Case No : Criminal Appeal No. 202, 334 Of 1993

Harischandra Dadaji Jadhav And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304B, 324, 498, 498A, 498A(1)(b)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 12 BOM CK 0083

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : Racheeta Rajendra Dhuru, M.M. Deshmukh

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. The Criminal Appeal No. 202 of 1993 has been filed by the Appellant who is original Accused No. 1 against the judgment and order dated 20th March 1993 passed by the learned Additional Sessions Judge, Malegaon, Dist- Nashik in Sessions Case No. 112 of 1991 thereby convicting Appellant-Accused No. 1 for the offence punishable under Section 302 of Indian Penal Code.

2. The Criminal Appeal No. 334 of 1993 has been filed by the State against the judgment and order dated 20th March 1993 passed by the learned Additional Sessions Judge, Malegaon, Dist- Nashik in Sessions Case No. 112 of 1991 thereby acquitting original Accused No. 2 and 3 for the offence punishable under Section 302, 498-A, 324 and 304-B read with 34 of Indian Penal Code.

3. The appeal filed by original Accused No. 1 is against conviction and the appeal filed by the State is against acquittal of Accused No. 2 arising out of the same judgment and order passed by the learned Additional Sessions Judge, Malegaon, Dist. Nasik. Hence, we are disposing of both the appeals by this common judgment.

4. Brief facts for filing these appeals can be summarized as under:-The marriage of deceased Ushabai took place on 16.05.1985 with the Accused No. 1(Harischandra Dadaji Jadhav). Accused No. 2 (Dadaji Dhodhe Jadhav) is the father of Accused No. 1 and Accused No. 3 (Parvatabai Dadaji Jadhav) is the mother of Accused No. 1. Accused No. 1 was in service at Primary Health Centre, Satana. Prior to that he was in service at Nagar and thereafter, at Chandori. Jayvant (PW 2), brother of deceased Usha went to bring Usha when deceased Usha and Accused No. 1 were camping at Nagar. It is alleged that all the accused told him that they were not ready to send Usha on the eve of Diwali festival as they wanted Rs. 1,00,000/- for constructing a bungalow. The accused further told him that she would be sent only if the amount is paid. At that time, deceased Usha told him that as the amount was not paid, accused were beating her and ill-treating her and also were not giving food to her. Jayvant (PW 2) then came back to his village Jaykheda. He narrated this incident to his father.

After Accused No 1 transferred to Chandori Jayvant (PW 2) again went to bring Usha. All the accused were present there. That time also the accused told him that she should be sent only if the amount which was demanded by them is paid. Deceased Usha complained Jayvant (PW 2) about ill treatment meted out to her by the accused. After coming back to his house at Jaykheda he narrated incident to his father.

On the eve of coconut-day witness Jayvant went along with one Pratap to the house of accused at village Munjavad for tying 'Rakhee' from Usha (now deceased). They reached at about 11.00 a.m. on 25.08.1991. Accused No. 1 and Usha were present there. On seeing them instead of welcoming them, Accused No. 1 went away. After tying 'Rakhee' to Jayvant and Pratap, Usha started weeping. When she was asked about the cause, she told them that, the accused were beating her and ill treating her as they were demanding the amount. She further told them that, an ill treatment given by the accused to her is unbearable. Accused then came and asked witness Jayvant as to why he had come. Witness Jayvant told them that, he had come to take Usha as his father was not keeping well and furthermore, he had come on the eve of Rakshabandhan. He requested the accused to send Usha with him, but the accused refused. Accused further told that, she would be sent only if the amount of Rs. 1,00,000/- is paid.

5. It is the case of the prosecution that, in presence of accused deceased Usha told Jayvant (PW 2) that, accused were beating her and therefore, he should take her to his house. Jayvant (PW 2) again requested Accused No. 2 to sent Usha, but Accused No. 2 refused to send Usha. Accused No. 2 further told that, nothing can be done against him as he is from police department. Witness Pratap also told Accused No. 2 to sent Usha. However, Accused No. 2 denied to send Usha with them. Therefore, they started from village Mujvad at 3.30 p.m. Witness Pratap halted at Satana and witness Jayvant came to village Jaykheda. On reaching the house, he narrated the incident to the members of his family. On

the same day at about 8.30 p.m. telephone message was received about the death of Usha. Complainant, prosecution witness Jayvant, Pratap and members of his family went to village Mujvad. At that time, all the accused were present in the house. On removing bed sheet from the body of deceased Usha they found injuries on the body of deceased Usha. Police were also present there. The informant, father of deceased Usha told police that, he want to give complaint first and as Accused No. 1 is serving at Satana, P.H.C., post-mortem should be carried out at any other place except Satana. Therefore, the dead body of deceased Usha was brought to Malegaon hospital for post mortem. The complainant lodged his complaint with the police. On the basis of complaint the offence was registered against the accused persons. Inquest panchnama was drawn, statements of witnesses were also recorded by the Police. The Medical Officer prepared post-mortem notes and noticed numerous injuries on the dead body of deceased Usha and, opined that, the cause of death was due to asphyxia due to throttling.

After investigation the accused were charge sheeted. The learned J.M.F.C. Satana, committed the case to the Court of Sessions as the offence under Section 302 of IPC is exclusively triable by the Court of Sessions. Accordingly, charge was framed against the accused for the offence punishable under Section 304 (B) read with 34 of IPC. All the accused pleaded not guilty. The learned Sessions Court recorded the evidence of prosecution witnesses as also the statements of accused under Section 313 of Cr.P.C. As indicated herein above, the learned Sessions Court after considering the evidence on record, the material and documents produced by the prosecution on record as also considering the evidence of medical officer, convicted Accused No. 1 Harischandra Dadaji Jadhav for the offences punishable under 302 and 498-A of IPC and acquitted Accused No. 2 and 3 of the offence punishable under Section 302, 498-A, 324 and 304-B read with 34 of IPC.

6. Learned counsel for the Appellant submits that, evidence of Dr. Shivaji Bhise (PW 5) is unreliable. In his cross examination he has admitted that there were allegations against him in respect of not properly carrying out the post-mortem in the past, and that in said cases PW 5 has to obtain anticipatory bail by filing Criminal Misc. Application No. 178 of 1992. Therefore, in the present case, post mortem done by him deserves to be discarded. PW 5 has admitted in his cross examination that, there were allegations against him in respect of professional negligence and that such type of allegations are against Dr. Ansari also, who accompanied Dr. Bhise while performing post mortem. However, there is no evidence to find out whether Usha has committed suicide as she had written on the wall that she is committing suicide by her own will. It is submitted that, the prosecution did not record the statement of the neighbors where the appellant-accused was residing with his wife at Nagar and Chandori. The prosecution has also not recorded the statement of the Appellant-Accused's son. He submits that, the learned judge erred in holding that, by not producing inquest panchnama by the prosecution itself is a suppression of best evidence on the part of the

prosecution as regards cause of death of Usha. Further the prosecution has also not examined the constable who took the body of the Usha (deceased) to Satana from Munjvad. The prosecution witnesses are all interested witnesses and no independent witness has been examined by the prosecution. Therefore, their evidence is unreliable and should not have been considered. Further the prosecution has not examined the panch witnesses relating to the inquest panchnama and also the spot panchnama. Krishna Jagtap (PW 1), father of the deceased Usha. Dadaji Jadhav (Accused No. 2) is a Police Inspector and has agricultural lands at Munjvad and having good financial condition.

It is submitted that, if the financial condition of the father of the Appellant-Accused was good, then there was no reason for the Appellant to ask Usha to bring Rs. 1,00,000/- (Rupees One Lakh only) from her father's house for constructing a bungalow. It is submitted that, in the cross-examination of Krishna Jagtap - (P.W.1) one inland letter dated 01.06.1991 (two months prior to the incident) and a letter dated 09.10.1990 were produced to indicate that the deceased Usha had no ill-treatment. He has even admitted in his cross-examination that the accused were not ill-treating and beating the deceased Usha. It is further submitted that, Krishan Jagtap (P.W.1) has admitted that he did not complain to the Police regarding ill-treatment meted out to the deceased Usha. It is submitted that, Jaywant Jagtap (P.W. 2), brother of the deceased Usha, in his evidence states that on earlier occasions i.e. on the eve of Diwali Festival when the accused and his wife deceased Usha were staying at Nagar and later on, when the accused was transferred to Chandori, P.W. 2 went to bring deceased Usha to her paternal house, the deceased Usha told him that she was being beaten and ill-treated by the accused because they wanted rupees one lakh for constructing the bungalow.

7. It is submitted that, it is surprising to note that Jaywant Jagtap (P.W. 2) did not give any complaint to the police when the deceased Usha told him that the accused were beating and ill-treating her and also when deceased Usha told him it was unbearable for her, then why did he not take her to village Munjavad. It is further submitted that, the learned Sessions Judge ought to have considered the fact that there were omissions in the statement of Pratap Khairnar - P.W. 3 about the statement that Ushabai had told that something would go wrong and therefore she should be taken home. It is submitted that, there is omission also in police statement of PW 3, about the father of the accused appellant coming to his house and ringing up on the phone at Jaikheda. It is further submitted that, learned Judge ought not to have relied upon the evidence of Pratap Khairnar (P.W. 3) who being a relative of Krishna Jagtap (P.W. 1) is obliging his relatives and thus, is an interested witnesses.

8. It is further submitted that, it is surprising to note that Bhagwan Khairnar (P.W. 4) photographer, in his evidence he denies that he saw any saree hanging or any writing on the wall when in fact he had clicked the photograph of the writing of the wall and the photograph was sent alongwith the handwriting of the

accused to the handwriting expert, but the examiner of documents, CID could not give opinion for want of sufficient identifying characteristics. It is submitted that, there are omission in Bhagwan Khairnar's (P.W. 4) police statement about the writing on the wall or hanging of the saree. It is submitted that, the learned Sessions Judge ought to have considered the fact that Bhagwan Khairnar (P.W. 4) had snapped the photographs for the police a number of times. There is no eye witness to connect the Appellant with the crime.

9. Learned APP relying upon the findings recorded by the Trial Court submits that, the Trial Court has properly appreciated the evidence on record and convicted the Accused No. 1- Harischandra Dadaji Jadhav, however, wrongly acquitted Accused No. 2 and Accused No. 3. It is submitted that, the prosecution has brought on record sufficient evidence which would attract provisions of Section 498 of IPC. There was continuous ill treatment and harassment by all the accused for not full filling the unlawful demand of Rs. 1,00,000/- (Rs. One lakh only) for construction of house of the accused. It is submitted that, evidence of PW 1, PW 2 and PW 3 unequivocally indicates the involvement of all the accused in alleged demand of Rs. 1,00,000/- (Rs. One lakh only) for construction of house, and upon non fulfillment of said demand, continuous ill treatment and harassment given to Usha (deceased). Therefore, learned APP submits that, appeal filed by State against acquittal of Accused No. 2 and Accused No. 3 deserves to be allowed.

10. The prosecution has examined Krishna Jagtap (PW 1). In his deposition before the Court he stated details about how they approached the accused. Thereafter, how proposal of marriage was materialized and thereafter how the marriage was solemnized. He stated that, accused demanded Rs. 1,00,000/- (Rupees One Lakh only) for construction of bungalow. He further stated the ill treatment given to the Usha by Accused No. 1. He also stated information received about death of Usha. He also stated in his deposition that, Jaiwant (PW 2) his son and Pratap (PW 3) visited the house of Usha. That time Usha narrated ill treatment and harassment by Accused No. 1 to her.

In his cross examination he stated that, Accused No. 2 is police inspector and has agricultural land at village Munjwad so also his financial position is good. Both the sons of accused No. 1 are in service. He had seen mark on the front side of neck of Usha when he went upon receiving informant about her death.

11. The prosecution has examined PW 2- Jaiwant Jagtap. In his examination in chief he stated deceased Usha is his sister. He married to accused No. 1 on 16.05.1985. The accused No. 1 now present before the Court is the same. The accused No. 2 is the father of accused No. 1 and the accused No. 3 is the mother of accused No. 1. On eve of Divali festival he went to the house of accused to bring Usha at Nagar. They asked him as what for he had come. He told them that he had come to take Usha for Divali Festival. They told him that, they were not ready to sent her. When he asked as to why , then they told him that they wanted Rs. 1,00,000/- for construction of a bungalow, and if the amount is given

then they would sent her. He then told that his financial condition was weak. At that time his sister Usha told him that, an amount as demanded by accused should be given to them, as accused were beating her, and ill-treating her, and they were not giving food to her. The accused did not send Usha, hence he came back to his house as Jaikheda. He narrated her father about what happened at Nagar.

Again after transfer of accused No. 1 village Chandori, PW 2 went to Chandori to bring her sister Usha. The accused No. 2 and 3 to whom he told that, he had come to take Usha. They told that, they would sent Usha on condition that an amount of Rs. One lakh is given to them as bungalow was to be constructed. At that time also Usha told PW 2 to fulfill the demand of accused as they were beating her and ill treating her. He then came back alone to Jaikheda. He narrated the said facts to his father after coming from Chandori. At the time of Rakshabandhan alongwith him, he took Pratap and they went to Munjawad. They reached there at about 11.30 a.m. Accused No. 1 and Usha were there in the house. Accused No. 1 did not accept his solution and went away. Deceased Usha came alongwith water and for tying Rakhi to both of them. She tied Raksha to both of them and then she started weeping. He asked her as to, why she is weeping. She told him that accused were beating her, ill treating her and they were not giving meals in time, and that accused were demanding money to be brought from her father. She told him to take her as trouble was unbearable to her. At that time all the accused came in the house from outside. They asked him as to what for he had come. He told them that he had come to take Usha as her father was not feeling well, and that he had come on the eve of Raksha Bandhan. He told them to send Usha with him but they refused. All the accused told him that they had already told three times for Rs. 1,00,000/- (Rupees One Lakh only) for construction of bungalow. He told them that, their financial condition is poor, and that they were unable to give money and, requested to send Usha with them. Usha (deceased) told in presence of accused that, accused were beating her and to take her to matrimonial house, PW 2 requested accused No. 2 to send Usha alongwith him. Accused No. 2 told that, he is unable to send Usha. He told him that, if the demand was fulfilled then he would send her. He is from the department and nothing can be done against him. At the same time, Pratap also told accused No. 2 to send Usha. Accused No. 2 gave same answer to Pratap. They started at 3.30 p.m. from village Mujawad. From their they came to Satana. Pratap remained at Satana and he came to village Jaikheda. Everybody was waiting for his arrival in house. They asked him as why Usha was not sent. He told them entire story that happened at Munjwad.

12. On 25.08.1991 at about 8.30 p.m. message was received through phone call at one shop. His father received the phone, and after coming back he told us that, phone call has come from Satana informing that Usha expired. Thereafter all family members gathered and they went in Tempo to Munjwad. They reached there at about 10 to 11 pm. All the accused were present in their house. Dead body of Usha was lying there. Police were alredy there, doing panchnama. After

removing the Chadar, PW 2 saw radish and greenish mark on the neck of deceased Usha. They saw 7/8 wheel marks on the back, there was an injury on right hand shoulder. Police told that dead body will have to be taken to Satana for post-mortem. They told family members of PW 2 that they wanted to give complaint first, and post mortem should not be carried at Satana. They told police that, post mortem to be carried out at any other place except Satana. Dead body was brought to Malegaon for post mortem. They went to Satana there his father lodged complaint.

13. The evidence of Jaiwant (PW 2) in examination in chief is not shattered in cross examination. Though suggestion was given by the defence that, he never visited the house of accused, he denied the said suggestion. Further he denied the suggestion that, he did not notice radish mark around the neck of Usha.

14. The prosecution has examined Pratap Khairnar (PW 3), who deposed in his examination in chief that, on 28.08.1991 witness Jaiwant came to him at 9.30 am. He told him that the father was not feeling well and therefore Ushabai was to be taken to parental home and further it was day of Raksha Bandhan. They reached to Munjwad at about 11.30 am. Deceased Usha and the accused No. 1 were in the house. They saluted accused No. 1 by saying 'Ram Ram' but he did not accept. He then went away. Usha prepared tea, brought a tat i.e. plate to perform Rakshabandhan, at that time she told that accused were ill treating her and beating and, they were not giving meals to her in time. She was weeping. She was further told to take her with them. She further told that something would go wrong and, therefore she should be taken by them. All the accused came there after some time. They asked Jaiwant (PW 2) as to what for he had come. He told them that it is a day of Raksha Bandhan, and that his father was not feeling well and that he was to be taken at hospital at Malegaon, and therefore they had come to take Usha with them. Thereafter, the accused told that they were unable to send her. They further told that if an amount of Rs. 1,00,000/- (Rupees One Lakh only) for construction of bungalow is given then only they would send Usha. He and Jaiwant (PW 2) requested them to send Usha. Even after their request, the accused did not send Usha with them and, they came back to Satana. Jaiwant (PW 2) went to Jaikheda.

At about 8.30 to 9.00 pm accused No. 2 came to him and told him that Ushabai expired and he want to ring-up. He told him to connect at Jaikheda on telephone, and he would talk. He sent his nephew to Munjwad to confirm. On return his nephew confirmed the news, and then he made phone call to complainant. At about 11.00 pm complainant and all came by Tempo. They then went to Munjwad. Panchnama was going on at the house of accused, police were there. Police showed them the dead body of Usha. They saw radish mark on the front neck of deceased usha. On the back of Usha there were wheel marks. The father of Usha told that post mortem was to be performed at Malegaon, but not at Satana. The reason was that the accused No. 1 was serving in Satana hospital. All of them came at Satana police station and complaint was given there.

15. Pratap Khairnar (PW 3) reiterated his contentions in the examination in chief. Nothing useful to the defence has been elucidated from his cross examination.

16. We have carefully perused the notes of evidence. At this juncture it would be appropriate to discuss the evidence of Medical Officer Shivaji Shrirangrao Bhise (PW 5), so as to find out, whether the death was homicidal, suicidal or accidental?. The prosecution examined Medical Officer Shivaji Shrirangrao Bhise as PW 5 who had performed the post-mortem of Ushabai. He stated in his evidence that, he found injuries mentioned in Column no. 17. The injuries mentioned in Column No. 17 are as follows:-

Throttling i.e. marks of pressure by thumb and fingers present on either side of the thyroid cartilage a depressed mark of thumb impression on right side of thyroid cartilage and bruising due to fingers pressing brownish on left side of the neck present, few abrasions on the angle of mandible left side present.

Fracture of thyroid cartilage present.

Marks of contusions on

i) Left Shoulder- 2 × 1

ii) Left arm post near axilla 1½ × 1.

iii) Obligate contusion over left scapula region at 4 places about 3 × 1, 6 × 1, 9 × 1 and 3 × 1.

iv) Contusion of right scapula region and right side of the neck at 4 sides about 4 × 1, 5 × 1, 3 × 1, 3 × 1.

v) Contusion on right gluteal region, at 2 sites about 8 × 1, and 6 × 1 with diffuse blackening of skin on the gluteal region.

vi) Contusion on left gluteal region about 4 × 1.

vii) Contusion on left calf 4 × 1.

viii) Contusion on lateral aspect of left thigh 5 × 1 and lateral aspect of left knee 3 × 1 and on left iliac crest 3 × 1.

ix) Multiple contusions on right thigh at 8 places about 4 × 1 to 5 × 1 size.

x) Contusion on right arm laterally at upper and 3 × 1. These are ante-mortem injuries.

On internal examination there were no injuries under scalp and no injuries or fracture to the skull. Brain meninges congested, petechial, hemorrhages were present in brain matter. On examination of thorax pleura congested and mucosa of passages was congested. Both lungs were markedly congested, cut section exuding dark fluid blood. On examination of the heart right chamber was full of dark fluid blood, left chamber was empty. On examination of abdomen, the decomposition of peritoneum was initiated and little foul smelling gas escaped

after opening the cavity. Stomach was empty, destined with gas, mucous was slightly congested. Similar findings were found in small and large intestine was present. Liver, pancreas, spleen and kidneys were darkly congested. Uterus was normal size and empty. The cause of death was due to asphyxia due to throttling. PW 5 stated that, P.M. notes bears his signature. He also stated that, doctor Ansari also signed on P.M. notes on separate sheet. It is at Exh. 61. Injuries by throttling would be pressing fingers. Contusions would be by hard and blunt object like a stick.

17. We perused the cross examination of Dr. Shivaji Bhise (PW 5). Though he admitted that, he applied for anticipatory bail in some other matter that itself cannot be ground to discard his evidence. Defence has tried to point out some minor discrepancies in his evidence, however, is evidence remain unshattered.

18. Prosecution further examined PW 6- Dr. Ganesh Trambak. He stated in his examination in chief that, on 25.08.1991 at about in between 5 to 7.00 pm Harischandra (accused No. 1) called him. Accused No. 1 told him that, his wife was not keeping well hence he should accompany him. He went with accused No. 1. He asked him on the way as to what had happened. He told him that there was pain in the chest, and that she became cold. When he went the patient was on the cot. He examined the patient. He could not get pulse and heart beat of deceased Usha. He told them that Usha was 90% dead and for confirmation he should get another doctor.

19. Prosecution examined PW 7- Sharad Wagh, who is a medical practitioner. He stated in his examination in chief that, from 1986, March, he was working as a medical officer at Satana. He know Accused No. 1. Accused No. 1 is working as Lab-technician at P.A.C. Satana. On 26.08.1991 when he was at his residence at about 7.15 pm accused no. 1 came. He told him that his wife had chest pain and she is serious, and he should examine her. He told him that Dr. Garud was already at his residence. He went alongwith him on his moped. He asked Dr. Garud if he had given any treatment. He told him that there was no heart beat and, also he was not getting pulse of Usha. With the help of stethoscope he (PW 7) examined Usha and found that there was no sound of heart beat and no pulse and no respiration. He examined Usha for one minute. Thereafter, he told Accused No. 1 that Usha has expired. He asked Accused No. 1 the name of patient. He told him the name of the patient is Ushatai. He came outside the house and came to P.L.C. with doctor Garud. He then range-up to police station.

20. The prosecution examined Namdeo Thobare (PW 10) who is Police Sub Inspector. He deposed in his examination in chief that, he was attached to Satana Police Station on 26.08.1994. On 25.08.1991 at about 8.00 pm, accidental death was registered by P.S.I. and further investigation was handed over to him. Immediately, he went to the spot. In the drawing room of the house of the accused one dead body was there. The accused No. 2 showed him the place of the incident. He then started drawing inquest panchnama. He found the fresh injury on the front side on the neck and also right side of the neck. He

found injuries on the both hands. There were marks of injuries on both the hands. There were marks of injuries on back side of the dead body.

Inquest panchnama was drawn and dead body was sent to Satana hospital. Relative of deceased told them that accused No. 1 serving at Satana hospital, and post mortem could not be performed at Satana and therefore, the dead body was sent to Malegaon for post mortem. Inquest panchnama was shown to him during examination in chief which bears signatures of panchas and his signatures. Photographs of dead body and place of incidence were taken. There was padavi just adjoining to the bungalow. He entered therein and saw one saree hanging on the sixth wooden rod attached to the roof. There was writing on the wall with the help of coal that "she is committing suicide by her own will". Bangle pieces were lying there. One piece of coal was lying on the cot. In presence of panchas panchnama was drawn. The articles were attached. Panchnama was shown to him which was same. The father of Usha gave complaint and therefore the offence was registered. He again started investigation and recorded statements of witnesses. At the instance of accused No. 1 a stick was attached under panchnama. Advance certificate was received from Medical Officer, Malegaon. It bears signature of senior P.S.I. On 31.08.1991, he recorded statements of four witnesses. On 06.09.1991 he obtained specimen of handwriting of accused No. 1 and 2. He sent natural handwriting on the wall and photographs to the handwriting expert alongwith handwriting of accused and deceased Usha. Further investigation was carried out by S.D.P.O. Shri. Salve.

21. The Trial Court framed charge at Exhibit-19. The said charge was for the offences punishable under Section 498-A read with 34 of IPC. The Trial Court also framed charge under Section 324 of IPC. There was separate charge under Section 302 read with 34 of IPC.

22. We have carefully perused the evidence of Krishna Jagtap (PW 1), Jaiwant Jagtap (PW 2) and Pratap Khairnar (PW 3) and conjoin reading of their evidence would indicate that, there was ill treatment and harassment by Accused No. 1 to Usha. Jaiwant Jagtap (PW 2) and Pratap Khairnar (PW 3) stated in their deposition that, they visited the house of the accused on the eve of Rakshabandhan festival. After some time Usha tied Rakhi to them. Thereafter Usha started weeping. When they asked her, why she was weeping, she told that accused were beating her, ill treating her and they were not giving meals in time and also accused are demanding money. It is true that, Krishna Jagtap (PW 1) in his cross examination admitted that, the accused are wealthy person and possess immovable property. Therefore, the Trial Court did not believe the prosecution case that there was demand of Rs. 1,00,000/- (Rupees One lakh only). However, as already observed there was ill treatment and harassment by accused no. 1 to Usha as it is evident from the evidence of Krishna Jagtap (PW 1), Jaiwant Jagtap (PW 2) and Pratap Khairnar (PW 3).

As already observed there is separate charge framed under Section 498-A read with 34 of IPC. Even the case in hand would be squarely covered under 498-A

(a) of IPC. The said provision in its sweep covers any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Therefore, even if the prosecution is not able to prove the alleged demand of Rs. 1,00,000/- (Rupees One Lakh only) by accused, so as to attract explanation (b) of sub section (1) of Section 498-A of IPC., same is not fatal to the prosecution case when sufficient, cogent and clinching evidence of illtreatment (physical and mental) is brought on record to attract explanation (a). of Section 498-A of IPC. Therefore, the prosecution has proved beyond reasonable doubt the ill treatment and harassment at the hands of Accused No. 1 to Usha.

23. We have discussed the evidence of medical officer Shivaji Bhise (PW 5) at length. His evidence unequivocally indicates that, Usha suffered number of injuries which are mentioned in his evidence, so also in the post mortem report. He has described those injuries as ante-mortem and stated that, the cause of death of Usha is due to throttling. Though, it is tried to suggest that, the death of Usha is suicidal, however, it is crystal clear from the evidence brought on record by the prosecution that, the Usha died homicidal death. The alleged incident had taken place in the house of the accused. The fact that, accused was present in the house at the relevant time is brought on record by the prosecution.

24. Dr. Ganesh (PW 6) in his evidence stated that, on 25.08.1991 at about 5.00 to 7.00 pm accused No. 1 called him. Accused No. 1 told him that, his wife is not keeping well, hence, he should accompany him. He went with Accused No. 1. On the way while going to the house of Accused No. 1, he asked what happened to his wife. Accused No. 1 told him that, there was pain in the chest of his wife and her body became cold. When he went to the patient, she was lying on the cot. He examined the patient. He could not get pulse and heart beats of Usha. He told that, Usha is almost dead. However, he advised Accused No. 1 to bring another doctor, so as to confirm the fact of death of Usha. It appears that, Accused No. 1 approached Sharad (PW 7) who is medical practitioner. In his cross examination he stated that, at the relevant time he was working as medical practitioner at Satana, and Accused No. 1 was working as lab technician at P.A.C. Satana. On 26.08.1991 when he was at his residence at about 7.15 pm, Accused No. 1 came to him. He told him that his wife had chest pain and then he requested him to examine his wife. He also informed Sharad (PW 7) that, Dr. Ganesh is already at his residence. Sharad (PW 7) went alongwith Accused No. 1 on his moped. He asked Dr. Ganesh whether he has given any treatment to Usha, however, Dr. Ganesh (PW 6) told him that, there are no heart beats and also he was not getting pulse of Usha. With the help of stethoscope he examined Usha and he found that there was no sound of heart beats and no pulse and no respiration. Thereafter, informed Accused No. 1 that, Usha is dead.

Upon reading evidence of Dr. Ganesh (PW 6) it is crystal clear that, accused was in his house and from his house he called both of them to visit his house for

health check up of Usha. He did not tell them the fact that, Usha is almost dead, however, he said that Usha is suffering from chest pain. Both of them visited the house of Accused No. 1 and found Usha dead. Therefore, it is abundantly clear that, Accused No. 1 was very much present at the time of incident and also in the house. It has come in the evidence of Shivaji Bhise (PW 5), so also Namdeo Thobare (PW 10) that, they noticed injuries on the body of Usha when they visited the house after receiving information about her death at 8.30 pm on the very same night of incident. Therefore, it is abundantly clear that, Usha was assaulted by Accused No. 1 and thereafter she was throttled and as a result she died.

25. Harischandra (Accused No. 1) in his statement under Section 313 of Code of Criminal Procedure, when he was asked whether Dr. Sharad Wagh (PW 7) examined deceased Usha, and when he stated that she is dead, what he i.e. Accused No. 1, is to say about it ? He stated that, it is true. He refused to examine any defence witness. He only stated that, he was doing well with Usha. Even when it was asked to him that Dr. Ganesh Trimbak (PW 6) was called by him at the house, and PW 6 also stated that Usha almost died. He stated that, it is true that he called PW 6. Therefore, it is abundantly clear that at the relevant time he was very much in the house and from house he called PW 6 and PW 7. As a matter of fact, he went to take them to house and both of them noticed that Usha is laying on cot in dead condition. A suggestion was also given to him about visit of Jaiwant (PW 2) and Pratap (PW 3) on the date of Rakshabandhan. However, he denied that suggestion. When it is the case of the accused that, Usha committed suicide, at least it was expected from Harischandra (Accused No. 1) that, he should have explained/disclosed as to in what manner she has committed suicide when he was at house. It has come in the evidence of investigating officer that, he received information at Satana Police Station, since he was working there. Munjwad is 3 Kilometers from Satana. Immediately on receiving call he went to Munjwad and visited the house of the Accused at about 8.30 pm and noticed fresh injuries on the front side of the neck and also right side of the neck of Usha. He found injuries on both the hands and the back side of the deceased Usha.

26. In the light of discussion in foregoing paragraphs, it is abundantly clear that, spot of incident is house of the Accused No. 1. Usha died homicidal death. There was ill treatment and harassment at the hands of Harischandra (Accused No. 1) to Usha as stated by PW 1 to PW 3. The investigating officer Namdeo Thobare (PW 10) noticed fresh injuries on body of Usha when he visited the house of accused which is spot of incident. The evidence of PW 6 and PW 7 unequivocally indicates that Accused No. 1 called them from his house and requested to come for health check up of Usha. While informing he stated that, Usha is suffering from chest pain, which was not the correct position. The conduct of Accused No. 1 to tell lie to Dr. Ganesh (PW 6) and Sharad Wagh (PW 7) that, Usha is suffering from chest pain needs to be kept in view. Merely because spot and inquest panchnama is not proved or there are minor lapses in the investigation would not

nullify the sufficient evidence brought on record by the prosecution that, Usha died homicidal death and author of her injuries was Harischandra (Accused No. 1).

27. In the light of above discussion the prosecution has proved beyond reasonable doubt that Harishchandra (Accused No. 1) has assaulted Usha in his residential house and thereafter throttled and killed her.

28. So far appeal filed by State is concerned in the light of discussion made in foregoing paragraphs the prosecution is not able to prove the demand of Rs. 1,00,000/- (Rupees One Lakh only) by the accused, therefore, so far Accused No. 2 and 3 are concerned they are rightly acquitted by the Trial Court. We have also carefully perused the findings recorded by the Trial Court and we find that, the findings recorded by the Trial Court are in consonance with the evidence on record and there is no perversity as such.

29. In the light of discussion in foregoing paragraphs Criminal Appeal No. 202 of 1993 filed by Harishchandra Dadaji Jadhav stands dismissed. Bail granted to him stands cancelled. Since his conviction is confirmed he is directed to surrender.

30. Criminal Appeal No. 334 of 1993 filed by State stands dismissed. Bail bonds, if any, of Accused No. 2 and 3 stands cancelled.