

(2014) 04 BOM CK 0096

In the Bombay High Court

Case No : Criminal Appeal No. 2 of 2012

Milind and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302, 309, 323, 34, 498A

Citation : (2014) 3 BomCR(Cri) 271

Hon'ble Judges : V.M. Deshpande, J;K.U. Chandiwal, J

Bench : Division Bench

Advocate : N.S. Ghanekar, Advocate for the Appellant; B.B. Gunjal, A.P.P. for Respondent/State, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

V.M. Deshpande, J.—The present appeal is directed against the judgment and order, passed by the Additional Sessions Judge-3, Aurangabad, on 15.12.2011, in Sessions Case No. 27 of 2008, thereby convicting appellant no. 1 Milind for the offences punishable under Sections 302 and 498A of the Indian Penal Code, and appellant nos. 2 to 5 for offences punishable under Sections 498A and 506(II) r/w 34 of the Indian Penal Code.

In respect of offence punishable u/s 302 of the Indian Penal Code, appellant no. 1 Milind was directed to suffer imprisonment for life and to pay fine of Rs. 500/-, in default of payment of fine, he was directed to undergo simple imprisonment for one month. In respect of the offence punishable u/s 498A of the Indian Penal Code, he was directed to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default of payment of fine, he was directed to undergo simple imprisonment for one month.

Appellant no. 2 Yuvraj, appellant no. 3 Padmabai, appellant no. 4 Amol and appellant no. 5 Arun are convicted for the offence punishable under Sections

498A r/w 34 of the Indian Penal Code and each of the appellant was directed to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default of payment of fine, each of them was directed to undergo simple imprisonment for one month on that count. Since these appellants were also convicted for the offence punishable u/s 506(II) r/w 34 of the Indian Penal Code, on that count, they were sentenced to suffer simple imprisonment for six months and to pay fine of Rs. 100/-, in default of payment of fine, each of the appellant was directed to undergo simple imprisonment for eight days.

FACTUAL MATRIX:-

2. On 24.9.2007, Police Station Officer of Sillod (Rural) Police Station received an information from the police patil of village Mhasala to the effect that daughter-in-law of Bankar is no more. It was also informed by police patil to the Police Station Officer that the mother of the deceased is not permitting the dead body to be shifted. Accordingly, the entry to that effect was taken in station diary.

3. On that day, Govind Sitaram Kanade (PW 10) was attached to the said police station as Police Sub-Inspector. He along with other staff went to village Mhasala. Police staff reached to the spot of the incident. P.S.I. Kanade found that dead body was lying in the back room of house of Bankar on a cot. It was the body of a female. He noticed signs of throttling and scratches of nail marks. He also noticed one towel , one banian, one handkerchief and one broken onion. The mother of the deceased was present there. She identified the dead body as of her daughter Varsha. Inquest panchanama (Exh. 25) was prepared.

He then sent dead body to the Government Hospital at Sillod. He then reduced into writing the complaint (Exh. 43) of Sumitrabai, mother of deceased. It was sent to the police station for registration of crime. Accordingly, a crime No. 126 of 2007 was registered for offences punishable u/s 302, 498A, 323, 504, 506 r/w 34 of the Indian Penal Code against the accused persons.

The investigation of said crime was handed over to Govind Kanade (PW 10). He prepared spot panchanama (Exh. 27) in presence of panchas. He seized handkerchief, banian, towel from the spot. The said articles were seized and sealed.

On the same day, he arrested accused nos. 2 to 5. Accused no. 1 Milind ran away after the incident.

Clothes of deceased and ornaments on the person of the deceased were seized. Provisional postmortem report was obtained and it was included in the investigation papers.

4. On 25.9.2007 P.S.I. Kanade (PW 10) proceeded to village Mhasala to trace out accused Milind. In the transit, he received telephone call from police patil, Mhasala informing him that Milind had tried to commit suicide by jumping in the well, however, he was taken out of the well. When P.S.I. Kanade (PW 10) reached village Mhasala, he found that people had tied Milind to a tree, so that he should

not run away and should not try to commit suicide again. P.S.I. Kanade found that the clothes of Milind were completely wet. On the complaint of police patil, a separate crime was registered against Milind for the offence punishable u/s 309 of the Indian Penal Code. He was sent to Government hospital for medical examination. On the said date, he recorded statements of four witnesses. During investigation, on the memorandum statement of accused no. 2 Yuvraj, an axe was recovered. He completed near about entire investigation. He sent muddemal property to the Forensic Science Laboratory for report. Since P.S.I. Kanade (PW 10) was ill, he proceeded on medical leave, and therefore, further investigation was handed over to P.S.I. Bharat Kakade (PW 12), who at the relevant time was Assistant Police Inspector at Sillod (Rural) police station. He also recorded statements of witnesses. Supplementary statement of informant Sumitrabai was also recorded. Thereafter he obtained Chemical Analyser's report. He obtained postmortem report (Exh. 51) and ultimately filed a charge sheet bearing No. 125 of 2007 on 13.12.2007 in the court of law.

The learned Judicial Magistrate, First Class, Sillod on 8.1.2008 passed committal order and case was committed to the Sessions Court at Aurangabad. Charge (Exh. 15) was framed against the appellants. All the appellants/accused abjured their guilt and claimed for trial.

5. In order to bring home the guilt of the appellants/accused, the prosecution has examined in all twelve witnesses.

(1) PW1-Latabai Suradkar, panch witness, who proved inquest panchanama (Exh. 25).

(2) PW2-Sukhdeo Thorat, panch witness, who proved spot panchanama (Exh. 27).

(3) PW3-Sumitra Jadhav, mother of the deceased, informant, who lodged the First Information Report (Exh. 43).

(4) PW4-Kusumbai Lone, the witness from whose house Sumitrabai gave telephone call to her husband narrating the incident. This witness has turned hostile.

(5) PW5-Bhikan Salunke, police patil, Mhasala.

(6) PW6-Dr. Vaishali Jadhav, who performed autopsy on the dead body of Varsha along with Dr. Archana and proved the postmortem report (Exh. 51) and also gave final cause of death certificate after the receipt of report of Chemical Analyser. The final cause death certificate is at Exh. 52.

(7) PW7-Arun Bankar, the maternal uncle of deceased Varsha.

(8) PW8-Atmaram Bidve, a B.A.M.S. doctor who examined first Varsha. This witness has failed to support prosecution.

(9) PW9-Subhash Pawar, a police constable attached to Sillod (Rural) police

station, who carried muddemal to Forensic Science Laboratory, Aurangabad.

(10) P.S.I. PW10-Govind Kanade, the investigating officer.

(11) PW11-Rajendra Kadam, P.S.I., who registered the crime against the appellants/accused.

(12) PW12-Bharat Kakade, A.P.I., who filed the charge sheet in the court of law.

6. As observed above, the learned court below convicted the appellants/accused.

SUBMISSIONS:-

7. We have heard Shri N.S. Ghanekar, learned counsel for the appellants and Mrs. B.B. Gunjal, learned Additional Public Prosecutor for the respondent/State.

According to the learned counsel for the appellants, there is no direct evidence available in the entire case of the prosecution in respect of assault on deceased Varsha. According to him, even Sumitrabai (PW 3), who was present in the house of Varsha did not claim that she has seen the act of assault on Varsha.

According to him, since on the date of performing the postmortem, Dr. Vaishali Jadhav (PW 6) was not sure about the cause of death. According to him, after the receipt of the Chemical Analyser's report, she has given the cause of death as, cardio vascular arrest due to asphyxia, as it could be found in Exh. 52. According to him, even at that point of time also Dr. Vaishali has not given reference about strangulation.

According to the learned counsel, since the evidence of Dr. Vaishali Jadhav (PW 6) does not show that it was a homicidal death, Section 106 of the Evidence Act cannot be pressed into service.

It is the submission of the counsel for the appellants that the prosecution has utterly failed to prove clinching circumstantial evidence, in order to form a complete chain of evidence, by which one could reach to the conclusion that it is only the appellant no. 1 Milind who is responsible for the death of Varsha.

Learned counsel further submitted that the evidence of Sumitrabai (PW 3) and Arun Bankar (PW 7) is not sufficient to record a finding of guilt against appellant no. 1 and other appellants in respect of offence punishable u/s 498A of the Indian Penal Code. He prayed that the learned trial court has misdirected himself while appreciating the evidence, and hence, in his submission, the judgment and order of conviction cannot stand to the scrutiny of law.

8. Per contra, learned Additional Public Prosecutor for respondent/State with vehemence pointed out that the learned court below in its wisdom has rightly reached to the conclusion on the basis of cogent and consistent evidence of the prosecution. According to her, appellant no. 1 Milind alone is responsible for untimely death of Varsha. She further submitted that Varsha was subjected to cruelty at the hands of the appellants, and therefore, there is no need to upset the finding of guilt in respect of the offence punishable u/s 498A of the Indian

Penal Code. Hence, she prayed that appeal be dismissed.

POINTS FOR DETERMINATION:-

(i) Whether Varsha died homicidal death?

(ii) Whether appellant no. 1 Milind is responsible for homicidal death of Varsha as found by the learned Additional Sessions Judge?

(iii) Whether all the appellants are liable for punishment u/s 498A r/w 34 of the Indian Penal Code?

(iv) Whether appellant nos. 2 to 5 are responsible for having committed the offence punishable u/s 506(II) r/w 34 of the Indian Penal Code?

EVALUATION OF EVIDENCE:-

9. In order to reach for the determination of the afore mentioned points, we will have to scrutinize, evaluate and reappraise the entire evidence of the prosecution on record.

A death can be natural, accidental, suicidal or homicidal.

Looking to the attending circumstances available on record in this case, the possibility of accidental death of Varsha is completely ruled out.

At the time of death, Varsha was carrying pregnancy. Notes of postmortem (Exh. 53) and postmortem report (Exh. 51) confirm the fact that at the time of postmortem she was found to have 3-4 weeks pregnant.

Varsha was married to appellant no. 1 Milind on 9.5.2007 and her postmortem was conducted on 24.9.2007. Thus, she was expecting her first child. Motherhood is the most beautiful event of womanhood. In absence of any reason, Varsha will not commit suicide, nor it is even remotely suggested by the defence. Thus, surely the death of Varsha was not suicidal one.

POINT NO. (i):-

10. Now, the question remains, as to whether her death is homicidal or sudden natural, as suggested by defence.

The prosecution has examined Dr. Vaishali Jadhav (PW 6). She has conducted autopsy on the dead body of Varsha. She was attached to Sub-District Hospital, Sillod as Medical Officer. On 24.9.2007, she along with Dr. Archana Birnare performed the autopsy. On external examination, they noticed presence of rigor mortis, eyes were closed, tongue was inside the mouth, fluid was oozing from nostrils; upper and lower limbs were extended, the foot became club shaped.

Dr. Vaishali (PW 6) found nail marks on the throat at the left side and swelling on throat started from middle and stopped on left side neck.

11. The doctors, who performed postmortem examination, after opening body,

inspected the thorax and found that pleura (covering on lung) was congested. Larynx trachea and bronchi in congested position. Both the lungs, right and left, were found congested and edematous. Pericardium was also found congested. Right chamber of heart was full of blood and left chamber was empty. It was also found that liver and gall bladder, pancreas and suprarenals, spleen and kidneys were in congested position. of course, doctors also found that Varsha was carrying fetus of about 3-4 months (12 to 16 weeks).

The evidence of Dr. Vaishali Jadhav (PW 6) would reveal that postmortem report was prepared, however, the opinion was reserved till the receipt of Chemical Analyser's report.

Later on Dr. Jadhav received the report from the Chemical Analyser and in both the bottles sent to the Chemical Analyser containing stomach piece of small and large intestine and its contents, piece of spleen, liver, lungs, heart, brain and kidney, no poison was detected.

After receipt of Chemical Analyser's report, she issued certificate stating the final cause of death.

According to Dr. Vaishali, Varsha died because of, cardio vascular arrest due to asphyxia, cause of asphyxia may be because of strangulation.

12. Latabai Suradkar (PW 1) is a panch for inquest conducted on the dead body of Varsha. The inquest panchanama is at Exh. 25. Her evidence would reveal that when she saw dead body, she noticed ligature marks around her neck. The inquest panchanama (Exh. 25) shows that on the neck nail marks and scratches were found.

P.S.I. Govind Kanade (PW 10), who rushed to the spot from police station on receipt of the information from police patil, Mhasala also found the scratches of nail marks and signs of throttling on the dead body when he saw firstly the body of Varsha.

The learned counsel for the appellants seriously attacked the finding of the doctor that the cause of asphyxia was because of strangulation. According to the learned counsel, the doctor has not found any signs of struggle. With vehemence, learned counsel submitted that in column no. 17 of the postmortem report exact location of nail marks on the neck is not mentioned by the doctor and the length, breadth and colour of swelling noticed by the doctor is also not mentioned. Similarly, according to him, the doctor could not notice any bleeding and congestion of vessels in the underlined tissues. Learned counsel submitted that asphyxia may be the result of sudden natural death. He further submitted that the doctor was supposed to fill in all the relevant heads mentioned in the printed form of the postmortem report. According to him, non-mentioning of the injuries found on the dead body of Varsha as ante mortem in column no. 18, is fatal to the case of prosecution.

13. One would easily be carried away by such an attractive and forceful

submission, if the evidence of Dr. Vaishali (PW 6) is not closely scrutinized.

In so far as the sign of struggle is concerned, when Dr. Vaishali (PW 6) was under cross-examination of the learned cross-examiner, the question was put to Dr. Vaishali that on examination of the clothes of lady, she did not find any sign of struggle. Very cleverly, the learned cross-examiner has not put a question to Dr. Vaishali (PW 6) that on examination of the body of Varsha she did not find any sign of struggle. In that behalf, in her evidence, Dr. Vaishali has deposed from the witness box as under:-

(11) To support my opinion in respect of strangulation, marks for struggle for life are mentioned by me in column no. 17 of my P.M. Report. The observations in column no. 20 of my P.M. report, are the signs of asphyxia and strangulation. Nail mark and swelling on the neck of the dead body, noticed by me were ante mortem. In my rough notes, I have mentioned that, nail marks and swellings on neck were ante mortem. Due to inadvertence, it has not been mentioned by me in column no. 18 of p.m. report.

Interestingly, the afore said version of the doctor has remained completely unshaken during her lengthy and searching cross-examination at the hands of learned cross-examiner. The contention of non-mentioning of the fact that the injuries found were ante mortem in column no. 18 of the post mortem report is totally misplaced. Postmortem report (Exh. 51) would reveal that it is a printed proforma containing various heads and sub-heads. Those are to be filled in the hand writing of the doctor conducting postmortem examination.

14. In the present case, Dr. Vaishali Jadhav has given original notes prepared by her regarding the postmortem to the police and obtained acknowledgment of the concerned police station in the office copy. The copy of the notes prepared by her, which bears her signature and acknowledgment given by the concerned official of Sillod (Rural) police station, was produced on record. She proved the contents of the said notes. Further, neither before this court nor before the learned court below during the trial, there was any objection about the authenticity of the said document. The said notes prepared by Dr. Vaishali at the time of performing postmortem are at Exh. 53. Perusal of Exh. 53 clearly shows that the doctors who performed postmortem, have found that the nail marks on the neck at the left side and swelling on the neck were ante mortem. This can conveniently be reached, because those notes are in the sequence of printed proforma of the postmortem. In the printed proforma, column no. 18 shows, as to whether definitely the injuries found in column no. 17 are ante mortem. In the notes (Exh. 53) in column no. 18 against column (a) it is mentioned as Yes.

15. Taking down the notes at the time of conducting postmortem is a primary document, whereas filling up of the columns in a printed proforma made available to the doctor will be a ministerial act. In that view of the matter, merely because in a printed proforma, the doctor has not mentioned about the nature of the injuries as to whether those were ante mortem or post mortem, much

importance cannot be attached to such non-mentioning, in the light of the availability of the primary document on record, coupled with the specific assertion from the witness box by Dr. Vaishali (PW 6), which remained unshaken. Hence, it is absolutely clear that the injuries found on dead body of Varsha were ante mortem.

16. We cannot forget the fact that the postmortem of Varsha was the first postmortem conducted by Dr. Vaishali Jadhav and her deposition before the court from the witness box was her first experience in the witness box. In that view of the matter, when Vaishali Jadhav (PW 6) has stated in her evidence that due to inadvertence it remained to be mentioned by her in column no. 18 of the postmortem report, the evidence of Dr. Vaishali Jadhav need not be branded as suspicious, as tried to be suggested by the learned counsel for the appellants.

17. In the searching cross-examination of Dr. Vaishali Jadhav, it was suggested to her that there are so many causes of sudden natural death. Attack was made on the evidence of Dr. Vaishali Jadhav that she has not sent viscera for histopathological analysis. Her evidence would reveal that she did not send the viscera, because no history of any disease to Varsha was given to her. In order to buttress the submission that Varsha died of sudden natural cause, learned counsel invited our attention to her version as appearing in her cross-examination as under:-

Sudden natural death can be possible in case of diseases of Cardio vascular system, respiratory system, alimentary system, nerves system, urinal system and systemic disease. I agree with the proposition made by Dr. Modi, in his Medical Jurisprudence regarding sudden natural death mentioned on page no. 561-563 of 23rd Edition.

Chapter 17 of Twenty-third Edition of Modi's Medical Jurisprudence and Toxicology deals with, The Pathology of Sudden Natural Death. In the said Chapter, learned author Modi has given causes of sudden natural death. Those are:-

- (i) Diseases of the Cardio-Vascular System
- (ii) Diseases of the Respiratory System
- (iii) Diseases of the Alimentary System
- (iv) Diseases of the Central Nervous System
- (v) Diseases of the Genito-Urinary System
- (vi) Systemic Disease
- (vii) Fright, Dread, Anger or Any Other Emotional Excitement
- (ix) Trivial Procedure
- (x) Catheterisation of a Distended Bladder

(xi) Reflex Vagal Inhibition Due to Impacted Food or Foreign Body

We are afraid that the said Chapter, as found in the 23rd Edition of Dr. Modi is of any help to the case of the appellants.

No doubt true, as found in the said Chapter, Dr. Vaishali has admitted that the sudden natural death can be possible in case of the disease as found in the afore mentioned her version in cross-examination. There is no iota of evidence available in the entire case of the prosecution, nor it is the specific case of the defence, rather even remotely, that at any point of time prior to her death, Varsha was having any of such disease.

18. When Sumitrabai (PW 3), the mother of deceased Varsha, and Arun (PW 7), her maternal uncle were available for cross-examination, the defence has not brought on record the existence of any disease to Varsha, rather there is not even remote suggestion to these two witnesses about any of such disease. These two witnesses were the best persons from whom the appellants could have brought on record such evidence, if really Varsha was having any of the disease. Not only that, even an opportunity was given to appellant no. 1 to explain about his stand in his statement recorded by learned Judge of the court below u/s 313 of the Code of Criminal Procedure. There also, he has not stated that during the short period of their marital life he noticed that his deceased wife Varsha was having any type of disease. In that view of the matter and in absence of any concrete material on record, we are unable to find ourselves in agreement with the submission of the learned counsel for the appellants that Varsha died of sudden natural death.

19. In view of the exclusion of death of Varsha as accidental, suicidal or natural and in the light of the evidence available on record, especially the specific assertion on the part of Dr. Vaishali Jadhav (PW 6) that she found marks of struggle for life and in view of Exh. 52 the final cause of death, wherein Dr. Vaishali Jadhav has given her final opinion about the death of Varsha as, probable cause of death due to cardio vascular arrest due to asphyxia, we, on the reappraisal of the entire material evidence available on record, reach to the conclusion that the death of Varsha was homicidal one. Accordingly we answer Point No. (i) in affirmative.

POINT NO. (ii):-

20. Once we reach to the conclusion that Varsha died of homicidal death, as duly proved by the prosecution, we have to see, whether appellant no. 1 Milind, as held by the learned court below, is responsible, as an author, for her death.

21. Learned counsel for the appellants Shri Ghanekar relied upon two reported cases.

Joydeb Patra and Others Vs. State of West Bengal,

Sambhaji Vs. The State of Maharashtra and Another,

These two cases are pressed into service by the learned counsel, in order to show that the primary burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt and it is only when this burden is discharged, the accused could prove any fact within his special knowledge u/s 106 of the Indian Evidence Act to establish that he was not guilty.

In paragraph 9 of Joydeb Patra's case (cited supra), the Hon''ble Apex Court has observed as under:-

9) As the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the deceased died due to poisoning, in our view, the trial court and the High Court could not have held the appellants guilty just because the appellants have not been able to explain under what circumstances the deceased died.

In paragraph 18 of Sambhaji s/o. Chindhuji Pachare's case, the Division Bench of this court has observed as:-

18) In the present case, we find that the prosecution has firstly failed to prove that the case of homicidal death. Secondly, the prosecution has failed to prove any circumstances which would establish the complicity of the appellant. It is necessary for the prosecution to establish each and every incriminating circumstance beyond reasonable doubt. The prosecution has to further, establish that the circumstances, proved are so interwoven to each other that it can lead to no other conclusion than the guilt of the accused. We are of the considered view that the prosecution has failed to do so.

In the light of the afore said dictum, surely the accused will have to offer explanation only when the prosecution has proved the fact that the death was homicidal one.

In the present case, the prosecution has clinchingly proved that the death of Varsha was homicidal one.

22. The evidence of Sumitrabai (PW 3), mother of deceased would reveal that on 23.9.2007 she had been to village Mhasala. Sumitrabai (PW 3) is ordinarily resident of Osmanpura, Aurangabad. The presence of Sumitrabai (PW 3) at Mhasala on 23/24.9.2007 is not challenged by the defence. Though in the statement recorded u/s 313 of the Criminal Procedure Code the appellants have denied her presence at their house at Mhasala, however, the evidence of Govind Kanade (PW 10) shows that he received the information about the death from police patil of village Mhasala and that time he was intimated that the mother of the deceased is not permitting the dead body to be shifted. Further, the extract of station diary entry (Exh. 72) in respect of Sana Entry No. 10, which was taken at 7.30 in the morning, clearly mentions the presence of Sumitrabai. The said document shows that the mother of the girl is not allowing to shift the dead body. Further, when Govind Kanade (PW 10) reached to the spot on 24.9.2007 in the morning, he found Sumitrabai (PW 3) present there. Even his evidence would

reveal that at the spot itself, as per the say of Sumitrabai, she reduced her complaint (Exh. 43) into writing and then the said complaint was sent to the police station for registration of crime. In that view of the matter, it is very clear that on 23/24.9.2007, Sumitrabai was present in the house of the appellants at Mhasala.

23. The evidence of Sumitrabai (PW 3) would reveal that on 23.9.2007 at about 7.00 to 7.30 p.m. appellant no. 1 Milind, armed with an axe, rushed on her and her daughter. That time, appellant nos. 4 and 5 pacified appellant no. 1 Milind. Even in cross-examination, it is brought on record that at 7.30 p.m. accused took dinner in presence of Sumitrabai. From the following portion, as appearing in cross-examination of Sumitrabai, the presence of Sumitrabai at village Mhasala is cemented.

There was no quarrel between me and accused Milind since I had gone to house of accused at 2.00 p.m. upto 7.30 p.m. when accused took dinner.

The evidence of Sumitrabai shows that at about 10.00 p.m., she, parents and brothers of Milind slept in the front side of the house and in the back portion behind the curtain, Varsha and Milind were slept. Varsha and Milind slept on a cot. At about 2.00 to 2.30 in the night, as per the version of Sumitrabai (PW 3), mother-in-law of Varsha shouted loudly, and therefore, she awoke. The mother-in-law of Varsha uttered the words addressing Milind, where he was going. That time, Sumitrabai found Milind was going outside the house. Rest of the appellants were also there and they also ran towards Milind. Her evidence shows that she could not see Varsha outside, and therefore, she again entered in the house and noticed that Varsha was lying on the cot. That time, she noticed white coloured cloth in the mouth of Varsha and also noticed white coloured cloth surrounding her neck and she noticed that Varsha was dead.

24. Presence of appellant no. 1 Milind in the house in the night between 23rd and 24th September, 2007 is not disputed. Once, the presence of Sumitrabai (PW 3) and presence of appellant no. 1 Milind is proved in the house at Mhasala, the court will have to scrutinize the evidence of Sumitrabai.

Admittedly, Sumitrabai has not claimed in her evidence that she has witnessed assault on the person of her daughter, though she was present in the house of the appellants. Thus, the evidence of Sumitrabai (PW 3) is free from exaggeration. Presence of Milind appellant no. 1 during night time along with his wife Varsha in the back portion of room behind the curtain is most natural.

The version appearing in the testimony of Sumitrabai (PW 3) that in the night between 23rd and 24th September, 2007 she heard the shouts of mother-in-law of Varsha addressing appellant no. 1 Milind as to where he was going and Sumitrabai's awakening due to the shouts and her noticing Milind appellant no. 1 going out of the house, is not at all challenged in her evidence. Not only that, the said fact is also found corroboration in the complaint (Exh. 43). The conduct of appellant no. 1 Milind leaving the house at odd hour of night is most unnatural.

The evidence of prosecution would reveal that till late morning hours of 24th September, 2007 appellant no. 1 Milind was not found in his house, which fact also speaks volumes against the appellant no. 1. Not only that, Sumitrabai (PW 3) immediately intimated the fact of Milind appellant no. 1 going away from the house of the appellants and her noticing Varsha in dead condition at 3 O'clock on 24.9.2007, to her husband, by using telephone from the house of one Kusumbai. Said Kusumbai, though examined as Prosecution Witness No. 4, has turned hostile.

However, Latabai Suradkar (PW 1), a panch witness, who is resident of Aurangabad and is relative of Sumitrabai, was present at Mhasala in the morning of 24.9.2007. Her evidence reveals that on 24.9.2007, she along with the father of Varsha and other neighbouring persons had gone to village Mhasala at about 7.30 a.m. This fact clearly shows that Sumitrabai (PW 3) intimated the fact to her husband by using the telephone from the house of Kusumbai. Though Kusumbai has not supported the prosecution case, presence of Latabai along with the father of Varsha clearly establishes the fact that such telephone call was made. It is obvious that Kusumbai must have been won over by the accused persons being the resident of same village.

25. In the present case, when appellant no. 1 was apprehended by police, his nail clippings were taken. Said nail clippings were sent to the Chemical Analyser for examination. The Chemical Analyser's report in that behalf is available on record at Exh. 88. The said report shows the existence of human blood in the said nail clippings.

The report of Chemical Analyser (Exh. 86) clearly shows human saliva on banian, towel , handkerchief and sari. Those articles were seized under seizure panchanama by the investigating officer, which were found lying on the cot.

26. The nail marks as found by Dr. Vaishali Jadhav in her postmortem report and the human blood found in the nail clippings of appellant no. 1 Milind are most incriminating circumstances appearing in the prosecution case and in the light of the fact that it is a homicidal death, in view of Section 106 of the Indian Evidence Act, the appellant no. 1 Milind ought to have given plausible explanation for the same. Therefore, according to us, following are the circumstances appearing in the prosecution case against the appellant no. 1 Milind.

(i) Milind and Varsha, in between the night of 23rd and 24th September, 2007, were sleeping in the back side of the room in their house.

(ii) Appellant no. 1 Milind was seen going out from the house at 2.30 a.m. in the night between 23/24.9.2007.

(iii) Presence of Sumitrabai (PW 3) is proved in the house of appellant no. 1 Milind at village Mhasala.

(iv) Sumitrabai (PW 3) awoke due to the shouting of mother-in-law of Varsha and that time she noticed that appellant no. 1 left the house and when she went

inside the back room, she found Varsha in dead condition.

(v) Immediately the said fact was intimated by Sumitrabai (PW 3) to her husband on telephone from the house of Kusumbai.

(vi) Appellant no. 1 Milind subsequently tried to commit suicide by jumping into the well and he was being taken out from the well by the villagers and tied to a tree.

(vii) P.S.I. Govind Kanade (PW 10) registered offence against appellant no. 1 Milind u/s 309 of the Indian Penal Code.

(viii) Human blood was found in the nail clippings of appellant no. 1 in view of Chemical Analyser's report (Exh. 88).

(ix) Human saliva was found on banian, towel, handkerchief and sari as per report of Chemical Analyser (Exh. 86).

All the above circumstances clearly establish the complicity of appellant no. 1 Milind in the crime. All the said circumstances are proved beyond reasonable doubt by the prosecution, which are interwoven with each other and leads to no other conclusion than the guilt of the appellant no. 1.

27. In that view of the matter, we have no hesitation in our mind to reach to the conclusion that appellant no. 1 Milind is responsible and is the author for the homicidal death of deceased Varsha.

The learned Additional Sessions Judge, Aurangabad has, therefore, rightly reached to the conclusion that the appellant no. 1 Milind is guilty of offence punishable u/s 302 of the Indian Penal Code and has rightly sentenced him to suffer imprisonment for life. We affirm the said finding and the order of conviction and sentence, passed against the appellant no. 1 Milind, by the learned Additional Sessions Judge, Aurangabad. Accordingly, we answer point no. (ii) in affirmative.

POINT NOS. (iii) and (iv):-

28. Now, we have to consider whether the remaining appellants, namely appellant nos. 2 to 5 and also appellant no. 1 are guilty of offence punishable u/s 498A and 506(II) r/w 34 of the Indian Penal Code.

In so far as the charge against the appellants for the offence punishable u/s 498A r/w 34 of the Indian Penal Code is concerned, the only available evidence in the entire prosecution case is of Sumitrabai (PW 3) and Arun Bankar (PW 7), the maternal uncle of deceased Varsha. From the entire evidence of Sumitrabai (PW 3), there is no single whisper that at any point of time the appellant nos. 2 to 5 demanded any amount as alleged in the prosecution case, though Arun Bankar (PW 7) claims that all the appellants demanded an amount of Rs. 50,000/-, it is clearly an exaggerated version. The father of deceased Varsha is not examined to prove the charge u/s 498A of the Indian Penal Code. If the

entire evidence of Sumitrabai (PW 3) is scanned minutely, then it is manifest that she deposed that it is only appellant no. 1 Milind who demanded Rs. 50,000/-. In absence of specific assertion on the part of the mother of Varsha that the appellants nos. 2 to 5 demanded Rs. 50,000/-, it will be too risky to accept the general statement made by Arun Bankar (PW 7) that there was a demand of Rs. 50,000/- from all the accused persons.

29. The evidence of Sumitrabai (PW 3) would reveal that marriage of Varsha and appellant no. 1 took place on 9.5.2007. After one month of the marriage, Varsha along with her husband Milind came to the house of Sumitrabai at Aurangabad. That time, Milind was in service of Ayurvedic College at Kanchanwadi, Aurangabad. According to the version of Sumitrabai, she and her husband had arranged a job of Peon for accused Milind, however, after 2-3 days it was revealed to them by appellant Milind that instead of doing service of Peon, he would prefer to do agricultural work. It is an admitted position on record that the appellants own agricultural land at village Mhasala and at the time of marriage, appellant Milind used to cultivate agricultural land and was taking education.

According to the prosecution case, appellant no. 1 Milind demanded Rs. 50,000/- from parents of Varsha, so as to enable him to procure service in one school. The husband of Sumitrabai (PW 3) is working as a driver on the car of one Madhukar Anna Mule, one of the Director of Ayurvedic College, Kanchanwadi, Aurangabad, an influential person. In fact, after the marriage, a job of peon was given to the appellant no. 1 in the said Ayurvedic College. Once, it is established on record from the evidence of Sumitrabai (PW 3) that Milind was not interested in doing job of peon and was interested in doing agricultural work, it will be very difficult to accept the claim of Arun Bankar (PW 7) that there was a demand of Rs. 50,000/- from Milind and on that count there was any ill-treatment to Varsha. Even from the version of Sumitrabai (PW 3) appearing in the examination-in-chief itself it is clear that when Milind tried to attack on Sumitrabai, that time he was restrained by appellant nos. 4 and 5.

30. Therefore, looking to the quality of the evidence as appearing in the prosecution case, the conviction awarded to appellant nos. 2 to 5 for the offences punishable under Sections 498A and 506(II) r/w 34 of the Indian Penal Code is clearly unsustainable. Also in our considered view, appellant no. 1 Milind cannot be held guilty for the offence punishable u/s 498A of the Indian Penal Code. Accordingly point nos. (iii) and (iv) are answered in negative.

CONCLUSIONS:-

The discussion in the foregoing paragraphs leads us to draw the following conclusions:-

(i) Criminal Appeal No. 2 of 2012, arising out of the judgment and order of conviction, passed against the appellants by the learned Additional Sessions Judge-3, Aurangabad, on 15.12.2011, in Sessions Case No. 27 of 2008, is partly allowed.

(ii) The order of conviction, passed against appellant no. 2 Yuvraj, appellant no. 3 Padmabai, appellant no. 4 Amol and appellant no. 5 Arun, for the offences punishable under Sections 498A and 506(II) of the Indian Penal Code, is hereby quashed and set aside. Their bail bonds stand cancelled. Fine amount, if paid by them, be refunded to them.

(iii) The order of conviction, passed against appellant no. 1 Milind, for the offence punishable u/s 498A of the Indian Penal Code, is hereby quashed and set aside.

(iv) The order of conviction, passed against appellant no. 1 Milind, for the offence punishable u/s 302 of the Indian Penal Code, is hereby confirmed. To that extent, appeal filed by appellant no. 1 Milind is hereby dismissed.

(v) Appeal partly allowed.