
(2011) 03 BOM CK 0211
In the Bombay High Court
Case No : Criminal Appeal No. 141 of 1999

Punamlal Ahir and Shamlal Ahir

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 304B

Citation : (2011) 2 Crimes 6 : (2011) 3 DMC 103 : (2011) 8 RCR(Criminal) 2377

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : C.R. Deshpande, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This appeal is filed challenging the final judgment and order dated 15th March, 1999 in Sessions Case No. 71/1997 passed by the IInd Additional Sessions Judge, Nanded, by the appellants/herein who are original accused Nos. 1 and 2. Both the accused/appellants are convicted for the offence punishable U/Sec. 498A r/w Sec. 34 of the Indian Penal Code and sentenced to suffer S. I. for two years and fine of Rs. 1,000/each in default SI for three months. They are further convicted for the offence punishable U/Sec. 304B r/w Sec. 34 of the I. P. Code and sentenced to suffer SI for seven years and fine of Rs. 2,000/each in default SI for six months. However, they came to be acquitted from the offence punishable U/Sec. 306 and 201 r/w Sec. 34 of I. P. Code. The accused No. 3 Gauribai is acquitted from all the offences punishable U/Sec. 498A, 304B, 306 and 201 r/w Sec. 34 of the I. P. Code.

At the outset it is relevant to mention that, the appellant No. 1 herein died during the pendency of the appeal. This Court 3 cri appeal 141.99 in its order dated 01st December, 2010 observed that, the advocate for the appellants informs that the appellant No. 1 died during the pendency of the appeal and on

production of death certificate of the appellant No. 1 the appeal would stand abated. The counsel for appellants informs this Court that death certificate of appellant No. 1 is already placed on record.

2. The prosecution story in brief is as under :

Mangala was the daughter of Laxman Khare/P.W. 5 resident of Jalna. She married before 2 1/2 years to 3 years of her death with Shamlal S/o Mohanlal accused No. 2. The accused No. 1 is real brother of accused No. 2 and accused No. 3 Gauribai is wife of the accused No. 1. Since marriage all these persons are residing in the same house situated at Gawalipura, Nanded.

3. The accused were pulling on well with Mangala till the birth of the son. Thereafter, she was subjected to cruelty and harassment for the demand of Rs. 15,000/by all the accused. The accused Shamlal and Mangala had been to the house of the complainant Laxman Khare prior to Diwali in the year of the incident. At that time Mangala asked complainant to pay Rs. 15,000/ and if the amount is not paid she would have to face 4 cri appeal 141.99 harassment. Not only that the nephew of complainant Shankarlal and Ramesh had been to the house of Mangala at Nanded. When Ramesh had been to her matrimonial house at the time of Rakhi Purnima she asked Ramesh to inform her father that there was demand of Rs. 15,000/and the accused were harassing her for the same. Ramesh informed likewise to the complainant and on returning to Nanded he informed accused that the complainant assured to fulfil their demand.

4. Shankarlal had been to the house of accused at Nanded before Diwali. When he visited the house of accused he was accosted for bringing cash of Rs. 15,000/. The accused started abusing him after becoming aware that no cash is brought by him. Mangala intervened, but she was slapped by the accused No. 2. The accused No. 1 Punamlal had been to the house of the complainant on the day of Diwali. He demanded Rs. 15,000/to the complainant. The complainant showed his inability to pay the same, so accused No. 2 was annoyed and he returned back. Ramesh had been to the house of accused one day prior to incident. He was accosted by the accused for bringing cash. He said that he has not brought the cash. The accused at that time threatened that anything may happen with Mangala.

5. In the night of 01.06.1996 Mangala while sleeping in the house caught with fire. She was immediately taken to the hospital at Nanded. Then on 02.06.1996 at about 5.30 a.m. the complainant received this message on phone. It was informed to him that Mangala received shock of electricity due to short circuit. At 11.30 a.m. he also received telegram about the said incident. At that time elder brother of complainant Mohanlal was serious and was admitted in the hospital at Jalna. Therefore, he sent his wife Hirabai, his nephew Sunderlal and other s to Nanded. Before their arrival Mangala expired.

6. While Mangala was in the hospital her statement was recorded by the police. Her statement was also recorded by Special Judicial Magistrate. A. D. was

registered. Inquiry of AD was in progress, the inquest panchanama was drawn. In the post mortem it is disclosed that the smell of kerosene was perceived from the burn injuries.

7. On 05.06.1996 the complainant lodged the complaint in the police station Vazirabad against all accused. As his brother died on 04.06.1996 he could not file the complaint prior to 05.06.1996. The offence was then registered. The investigation was then proceeded with and after completion of the same the accused are charge sheeted.

8. The charge has been framed U/Sec. 498A, 304B, 306, 201 r/w Sec. 34 of the I. P. Code. The accused pleaded not guilty and claimed to be tried.

9. The prosecution in this case has examined as many as 12 witnesses. P.W. 1, 2, 3 and 11 are the panch witnesses of the inquest panchanama and scene of offence panchanama, attachment of cloths from the house of the accused. P.W. 4 is medical officer Satyanarayan Punpale who had done autopsy on the dead body of the deceased on 02.06.1996. P.W. 5 Laxman Khare is the complainant, the father of the deceased. P.W. 6 is the son of maternal uncle of the deceased. P.W. 7 Shankar Khare is nephew of the complainant, Sunderlal Khare is nephew of complainant and P.W. 9 Baibai Bhurewar is one of lady residing at Jalna who happened to the area in which Mangala was residing just few hours prior to the incident. Then P.W. 10 PHC Puri who recorded the scene of offence panchanama. P.W. 12 is investigating officer.

10. It is the case of the accused that, they never ill treated Mangala. They never harassed her for the demand of Rs. 15,000/-. In fact the accused No. 1 and 2 are residing separately and have no concern with each other's house. According to accused No. 2 in the night of the incident he was outside the room in which Mangala was sleeping. At about 3.30 a.m. in the night he heard commotion of Mangala. He went inside the room. He found Mangala was burning. He also raised commotion. The accused No. 1 and others brothers then came there. All of them tried to extinguish the fire with the help of wet blanket. He enquired with Mangala how she caught with fire and she told them that because of short circuit of the electricity she caught with fire. All of them then admitted Mangala in the hospital. The information was then given to the complainant and others.

11. It is the case of the accused that, one Hansraj Ahir the M. P. is related to the complainant. He had been to Nanded on 04.06.1996. The complainant, Shankarlal, Sunderlal were with him. They called the police at the rest house. The complainant and other were annoyed because of the death of Mangala. So to harass all accused they have pressurised police with the help of MP Ahir and have filed this false case against all accused.

12. It is specific case of the accused No. 1 and 3 that after hearing commotion of Mangala and accused, they came to their house. They tried to extinguish fire on the person of Mangala. The accused have examined four witnesses in the defence. One is DW 1 Vithal Bulbule Special Judicial Magistrate who recorded the

dying declaration of Mangala on 02.06.1996. D.W. 2 is police head constable Bokare, who has recorded the statement of Mangala while she was admitted in the hospital. D.W. 3 is Dr. Sanjay Manathkar who has given endorsement about the consciousness of Mangala on both the statements. D.W. 4 is police head constable Kendre who made enquiry of AD and submitted his report to the police station. There is specific defence of accused that Mangala died accidental death because of short circuit in the house in the night of the incident.

13. The IInd Additional Sessions Judge, Nanded after framing points for consideration/determination and after recording the evidence and also after hearing the parties convicted the appellants for the offences as stated in detail hereinabove. Hence this appeal is filed by the appellants. During the pendency of this appeal the appellants are enlarged on bail and appellant No. 1 died.

The learned counsel appearing for the appellants submitted that, the first information report is filed by P.W. 5 Laxman Khare who is father of deceased Mangala. The FIR at Exhibit 33 is dated 04.06.1996. There is two days delay in filing the FIR.

It is further submitted that, the information regarding death of Mangala was received by the complainant and thereafter he sent his wife and nephews, Sunderlal Khare and Shankarlal Khare to Nanded. The wife of complainant Laxman Khare had been to Nanded, immediately and had a talk with Mangala. It is further submitted that, the defence witnesses D.W. 4 Ganesh Kendre, Head Constable had deposed at Exhibit 72 that, he recorded the statement of Hirabai Laxman Khare on 02.06.1996 at Exhibit 74, wherein she has stated that, on enquiry Mangala told her that she received burn injuries due to electric shock. The said statement bears the signature of Hirabai Khare. In the said statement, Hirabai stated that, Mangala was not ill treated by anybody in her house. She has not been burnt by anybody nor there is any suspicion about her death. Therefore, the counsel for the appellants would submit that, when the mother of the Mangala herself stated that, Mangala was not ill treated by anybody in her house and she was not burn by anybody nor there is any suspicion about her death, in that case the appellants deserve to be acquitted. It is further submitted that, after the incident Mangala was admitted in the hospital at Nanded. Medical Officer D.W. 3 Dr. Sanjay Manatkar at Exhibit 70 has deposed that, the history about burns is noted in the MLC register as an accidental burn. The MLC register was brought in the Court. He further deposed that, at 5.30 a.m. statement of Mangala was recorded by the police head constable of Vazirabad Police Station. While recording her statement, she was conscious and D.W. 3 made endorsement on the said dying declaration. He further stated that, at 5.55 a.m. Special Judicial Magistrate also recorded dying declaration of Mangala, when she was conscious. He has signed the dying declaration and he was with the patient when dying declaration of Mangala was recorded. D.W. 1 Vithal Bulbule whose evidence is at Exhibit 64 has deposed about the dying declaration at Exhibit 65 and about its contents. D.W. 2 Kanthiram at Exhibit 67 who is Special Judicial

Magistrate has deposed about the dying declaration Exhibit 68 and about its contents. The statement of mother of deceased Mangala at Exhibit 74 also discloses oral dying declaration of the Mangala. Therefore, according to the counsel for the appellant, there are consistent four exculpatory dying declarations, on the history recorded in MLC register, dying declaration recorded by Police constable in presence of doctor, dying declaration recorded by Special Judicial Magistrate in presence of doctor and oral dying declaration to her own mother.

14. The counsel further submitted that, the prosecution examined as many as 11 witnesses. P.W. 1 Mulchand Ahir whose evidence is at Exhibit 18 is examined as panch witness of inquest, but he turned hostile. P.W. 2 Bhalchandra Yadav whose evidence is at Exhibit 19 is examined as panch witness on inquest who turned hostile. P.W. 3 Hanmantrao Battine whose evidence is at Exhibit 21 is examined as panch of place of offence not supported the case of prosecution. P.W. 4 Satyanarayan Punpale, Associate Professor whose evidence is at Exhibit 24 supports the prosecution case, however, he stated that, there were 95% burn, kerosene smell, carbon may be due to burns of polyester sari. If pieces of sari adhere to the body, they may smell of kerosene. P.W. 5 Laxman Khare, whose evidence is at Exhibit 50, who is father of complainant has not stated any disclosure to him by Sunerlal and also he has stated that there was no harassment to Mangala prior to birth of son. P.W. 6 Ramesh Dhuldani, nephew of complainant though supported the 12 cri appeal 141.99 prosecution case on demand, however does not affirm the disclosure to P.W. 5. P.W. 7 Shankar Khare has stated in his evidence that few days prior to Diwali he had been to the house of accused. According to the P.W. 7 in April after Diwali he went to attend the marriage and he had been to the accused. P.W. 7 states that, Shankarlal informed him the incident took place at the time of Marriage. P.W. 8 Sunderlal Khare supports the prosecution case, however, his disclosure to Laxman not affirmed by Laxman. P.W. 9 Gayabai Bheruwal supports the prosecution case, however, police have recorded her statement after 5 to 6 days of incident. P.W. 10 Machindra Puri supports the prosecution case. P.W. 11 Ahmedkhan who is panch of scene of offence panchanama turned hostile. P.W. 12 I. O. supports the prosecution case.

The learned counsel submitted that, though the FIR is 04th June, 1996 but appears to have been registered on 05.06.1996 at 17.15 p.m. (19.15 hours) There is no acceptable explanation for the delay. The explanation offered for delay that illness of brother of Laxman Khare is not acceptable for the reasons that at the time of filing of FIR his brother Mohanlal was alive. In the cross examination P.W. 5 has stated that his brother Mohanlal died after filing of complaint on 04.06.1996. It is further submitted that, there is delay in recording the statement of witnesses during investigation. P.W. 5 Laxman Khare stated in his evidence that complaint is filed on 04.06.1996. It is further submitted that, P.W. 6 Ramesh Dhuldani's statement is recorded on 18.06.1996. The statement of P.W. 7 is also recorded on 18.06.1996. P.W. 8 Sunderlal's statement is

recorded on 09.06.1996. P.W. 9 Bayabai's statement is recorded after 5 to 6 days. The statements of witnesses during the investigation are recorded very late. The counsel appearing for the appellant submitted that, if the statement of the prosecution witnesses are recorded after 5 to 6 days of the incident in that case benefit of doubt should go to the accused appellant. The delay is fatal to the prosecution and it also creates serious doubt about the testimony of witnesses. The counsel placed reliance on the following reported judgments of this Court and also the judgments of the Supreme Court.

i) 2008 All M.R. (Cri) 360 in case of Sunil Shambharkar v. The State of Maharashtra

ii) 2001 All. M.R. (Cri) 1569 in case of Bhagwan Ghotkar v. The State of Maharashtra.

iii) 1997 All M.R. (Cri) 1353 in case of The State of Maharashtra v. Abdul Kadar. 14 cri appeal 141.99

iv) 2005 (5) SCC 689 in case of Jagjit Singh v. The State of Punjab.

15. The learned counsel further submitted that, the evidence of P.W. 5 to 8 is of highly interested witnesses and their statements are also recorded after considerable time. Therefore, their evidence is not trustworthy. The non examination of Hirabai in the Court supports the defence case that, the prosecution avoided to examine her. Since her statement at Exhibit 74 was already recorded which strengthen the defence case. It is further submitted that, there is no reason for the defence witnesses D.W. 1 to D.W. 4 to depose false. On the contrary delayed FIR and delayed statements of P.W. 5 to P.W. 9 would be an after thought story. It is further submitted that, the Trial Court has misconstrued the defence. It is not at all the defence that, Mangala was burnt due to electric shock. Due to short circuit the fire exploded, the cloths on the rope caught fire and thereby Mangala received burn injuries. It is further submitted that, the prosecution case i. e. smell of kerosene on the body of Mangala and cloths of Mangala are given undue weightage. P.W. 4 admitted that, if burnt pieces of cloths adhere to the body, there may be smell of kerosene. No kerosene was smelt at the time of spot panchanama. At the time of spot panchanama cloths of deceased were not found at the place of incident. The prosecution failed to prove as to how cloths were found at the place of incident, kept in the plastic bag and who brought it, after filing of the F.I.R. The statement of P.W. 5 to P.W. 8 do not corroborate each other. Shankar, Sunderlal and Ramesh state about informing the facts to P.W. 5/Laxman. However, Laxman Khare either does not corroborate it nor he is specific about the date, time of receiving the information said witnesses. The question may arise as to how the short circuit affected Mangala only. It is her misfortune that, the loose electric wires were passing on the rafter below the tins, below that, there was a rope on which cloths were there and Mangala was sleeping alone below the said cloths and wire. The short circuit exploded the fire and burns cloths fallen on Mangala. It is an accident, who

would be the victim of an accident is beyond the imagination of anybody. The evidence discloses the demand by Punamlal only and not by Shamlal. It is the settled legal position that, the benefit of doubt always goes to the accused. The defence in this case being acceptable, the accused deserves acquittal. Therefore, the counsel for the appellant would submit that, this appeal may be allowed.

16. On the other hand learned Additional Public Prosecutor appearing for the State submitted that marriage of Mangala took place three years prior to date of incident. Mangala succumbed to burn injuries sustained by her and died in Civil Hospital Nanded on very same day i. e. on 02.06.1996. At the time of incident the accused No. 2 was at the house where the incident took place. She further submitted that, there was continuous demand of Rs. 15,000/by the accused and same fact has been stated by all the prosecution witnesses. It is further submitted that, the P.W. 5 in his statement before the Court has explained the delay in lodging the complaint. He has stated that, his elder brother was hospitalized and he was in critical condition and ultimately he died on 05.06.1996. The learned A.P.P. invited my attention to the evidence of prosecution witnesses and submitted that, all the witnesses have categorically deposed that there was demand of Rs. 15,000/by the accused persons from Mangala and on that count they have subjected her to cruelty and harassment. The A.P.P. invited my attention to the evidence of P.W. 4 Medical Officer at Exhibit 24 who proved the postmortem on deceased at Exhibit 25. The learned A.P.P. also invited my attention to the inquest panchanama and submitted that, the defence case that Mangala died accidental death is completely ruled out by the Medical Officer. The learned A.P.P. further submitted that, the two dying declaration on which the defence has placed reliance are inconsistent .In order to show the inconsistency in two dying declarations, the learned A.P.P. invited my attention to the contents of the dying declarations recorded by the Police Head Constable Bokare/D.W. 2 and recorded by Special Judicial Magistrate/D.W. 1 and submitted that, these two dying declarations are totally inconsistent. Both the dying declarations states altogether different story and, therefore, such dying declarations being inconsistent cannot be relied upon. The postmortem notes and inquest panchanama are genuine and trustworthy. The learned A.P.P. further submitted that, the dying declarations by Mangala must have been made in favour of accused under the pressure of accused and secondly for the welfare of her minor son who was one year old at the relevant time and who was in the custody of the accused. It has come in the evidence of D.W. 2 that the husband of Mangala Shamlal was present when the statement of the Mangala was recorded. Therefore, the learned A.P.P. would submit that, the prosecution has convincingly proved that the death of Mangala is dowry death and husband and his relatives are responsible for causing her death. Mangala died unnatural death. She died within seven years from the marriage and, therefore, presumption U/Sec. 113A of the Indian Evidence Act would arise. Therefore, the learned A.P.P. would submit that, the impugned judgment and order cannot be interfered with. Therefore, she prayed for dismissal of appeal.

17. I have given anxious consideration to the submissions of the learned counsel for the appellant and learned A.P.P. for the State. I have also perused the entire material placed on record, the impugned judgment and order challenged in this appeal and also original record and proceedings received from the Court of Sessions Nanded.

In this case, the prosecution claimed that the Mangala died unnatural death. The defence claimed that Mangala died accidental death. Therefore, at this juncture it would be appropriate to deal with said point that, whether the Mangala died accidental death or unnatural death. In this respect the evidence of the Medical Officer is important being competent witness on the subject.

The deposition of Satyanarayan Badrinarayan Punpale Associate Professor, GGM Hospital Nanded is at Exhibit 24. In his examination in chief he stated thus,

I am serving as Associate Professor department of forensic medicine and toxicology in the Government Medical College Nanded since 1991. The dead body of Mangalbai W/o Shamlal Ahir was brought to the hospital for post mortem. I have done post mortem on 02.06.1996. I have mentioned the ante mortem injuries in column No. 17 of the PM notes. The deceased has sustained 95% burns. There were burn injuries over the face, then over limbs, both the extremities, abdomen. The margins of burns were reddish Black carbon found to have been deposited over the body. There was smell of kerosene perceived from the body and scalp. There was no evidence of electrical injury on the part of the body. No post mortem injuries were there. However, spot particles were found in larynx, trachea and bronchi. On this post mortem I have given the probable cause of the death as "shock and peripheral circulatory failure due to 95% burns with kerosene smell. I have prepared the post mortem notes. They bear my signature. The contents are correct. It is at Exhibit 25. It also bears the signature of Dr. S. R. Kamble. The ante mortem burnt injuries are not possible by shock of electricity. The black carbon particles is due to kerosene burn. The ante mortem injuries are possible by kerosene burn.

(emphasis supplied)

Upon perusal of his examination in chief it is abundantly that, there was smell of kerosene perceived from the body and scalp of the Mangala. There was no evidence of electrical injury on the part of the body. No post mortem injuries were there. The deceased sustained 95% burns. There was burn injuries over the face, then over limbs, both the extremities, abdomen. The opinion about cause of death given by this witness is, "shock and peripheral circulatory failure due to 95% burns with kerosene smell." This witness has specifically stated in his examination in chief that, ante mortem burn injuries are not possible by shock of electricity. The black carbon particles is due to kerosene burn. The ante mortem injuries are possible by kerosene burns.

In his cross examination he has maintained that there was smell of kerosene from the body and scalp of deceased. From cross examination of this witness

nothing substantial or significant is brought on record by the defence so as to discard/disbelieve evidence of this witness. Merely, because he has stated in his cross examination that if the deceased wearing a polyester saree at the time of incident the pieces of same may adhere to the dead body, those general observation in his cross examination would not nullify his substantive evidence based upon post mortem examination before the Court. On more than one occasion he has stated that, the ante mortem burn injuries 21 cri appeal 141.99 are not possible by shock of electricity. The black carbon particles are due to kerosene burn and ante mortem injuries are possible due to kerosene and there was smell of kerosene from the body and scalp of Mangala. From perusal of his evidence it clearly appears that postmortem was performed on 02.06.1996 itself i. e. on the date of incident and, therefore, substantive evidence of this witness before the Court speaks voluminous and makes complete in road to conclude that death of the Mangala is not accidental one.

The inquest panchanama prepared on 02.06.1996 which is at Exhibit 20 also specifically mentioned that the body of the Mangala was smelling kerosene. It has also come on record that Mangala was kept in a necked condition. On enquiry by the police officer about the cloths of the Mangala, the appellant showed ignorance saying that, they are not aware about her cloths. However, the prosecution on 05.06.1996 was able to recover the cloths of the deceased Mangala from the house of appellants in their house seizure panchanama. On examination by C. A., kerosene residue is found on said cloths.

The case in hand stands on different footing for afore stated peculiar facts. Admittedly the incident took place during night intervening 01.06.1996 to 02.06.1996. It is relevant to mention that Mangala was in the custody of the husband at the relevant time. The defence is bound to explain under what circumstances death of Mangala had occurred. At this juncture it would be appropriate to refer to the provisions of Section 106 of the Evidence Act.

106 Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

18. Therefore, perusal of the provisions of Section 106 of the Evidence Act would make it clear that burden of proving fact especially within the knowledge of any person is upon him. The appellants herein examined four witnesses in support of their defence or their case to prove that Mangala died accidental death. The dying declaration of Mangala at Exhibit 65 is recorded by V. B. Bulbule, Special Judicial Magistrate, Nanded on 02.06.1996. It appears from the perusal of Exhibit 65 that, said dying declaration recording started at 5.55 a.m. and concluded at 6.15 a.m. There is also endorsement of the doctor. The Trial Court has concluded that there is no procedural defect or infirmity while recording the dying declaration. Therefore, I proceed on the footing that there was no any procedural flaw at the time of recording the dying declaration.

On perusal of Exhibit 65, it appears that four questions were asked to the deceased Mangala. First question was for asking her name. Second question was about time and place of incident. The third question is about how the incident had taken place and fourth question is about whether she wants to say anything more. While replying second question Mangala replied that the incident had taken place on 02.06.1996 at 4.00 a.m. at Gawalipura, Nanded. While replying third question how the incident had taken place, Mangala replied, the incident had taken place because of short circuit. She went to drink water, the earthen pot was outside room. Due to short circuit there was fire and she burnt. Therefore, in this dying declaration, it appears that Mangala stated that, incident took place because of short circuit, when she went to drink water outside, since earthen pot was kept outside room and due to short circuit she got the burns.

In her another dying declaration at Exhibit 69 which is also recorded on 02.06.1996 by D.W. 2. It appears that, recording of said dying declaration was at 5.30 a.m. It appears that, the dying declaration recorded by the Magistrate begin at 5.55 a.m and dying declaration at Exhibit 69 is 25 minutes prior to it. If the time gap is considered between these two dying declarations it can be safely gathered that hardly there was any time.

In her dying declaration at Exhibit 69 she has stated that, she has son of two years. In her said dying declaration she further stated that, on 01.06.1996 she had dinner and after that with her husband in their house she went to sleep. At about 3.30 a.m. there was sudden short circuit in the house and due to that the clothes which were kept on rope started burning and also wire in the said room is also burnt. I slept on the floor. My husband and son Yogesh were sleeping outside and remaining small children were slept inside the room. Due to short circuit my cloths were burn and due to burns I started shouting. Husband Shamlal, brother-in-law Chunilal and other family members removed me from the room and took to the hospital by an auto rickshaw where I was admitted. She has further stated that, I have no any trouble from the family members. The accident had taken place due to short circuit. I have no suspicion about anybody and the statement given is true and correct.

Upon perusal of the dying declaration at Exhibit 69 and Exhibit 65 it clearly reveals that, both the dying declarations have stated different story about the incident. The dying declarations are recorded one after another and there was hardly any time gap. Therefore, if the afore mentioned two dying declarations are compared, those are totally contradictory to each other and cannot be believed. Dying declarations are not trustworthy so as to believe story of the defence that Mangala died accidental death. The two dying declarations gave two different stories about how incident had taken place and how Mangala got burn. On reading the dying declarations, it appears that the accused persons have taken care to save themselves by putting in Mangalas mouth that there is no any ill treatment to her from the family members and she has no suspicion about any of them. In fact on the relevant time and date Mangala was completely under

control of accused and also she had one years child. Therefore, the conclusion drawn by the Trial Court that, these two dying declarations given by the Mangala are contradictory and those are given under pressure of the accused persons appears to be correct conclusion. D.W. 2 in his substantive evidence before the Court has specifically stated that, while recording the dying declaration the accused persons were present. The Trial Court has also observed that, the Mangala was having one year child at the relevant time and that was also one reason that she was under pressure to give such dying declarations. However, on reading these two dying declarations it is clear that statements therein are contradictory to each other and said dying declarations cannot be believed. From the entire evidence, it appears that the accused persons were desperate to prove that the Mangala died due to accidental death. However, as stated hereinabove from the evidence of Medical Officer, the inquest panchanama, C. A. report and evidence of P.W. 9 and P.W. 12, the prosecution has proved beyond reasonable doubt that death of Mangala was not accidental death and same was unnatural. In this respect it can be safely stated that, the person may lie but the circumstances won't lie. The postmortem report is carried on 02.06.1996 itself and also inquest panchanama on 02.06.1996. There is no reason for P.W. 4 who is Medical Officer to state anything beyond the record and everything he has narrated after performing postmortem on the dead body of Mangala. Therefore, the finding recorded by the Sessions Court, Nanded that the Mangala died unnatural death is required to be confirmed.

The partially burnt yellowish coloured sarees along with whitish brassier in a polythene bag, put in a cloth bag, belonging to deceased Mangala was sent for C. A. examination. The results of analysis at Exhibit 59 shows detection of kerosene residues on said cloths. This also strengthens the case of prosecution that death of Mangala was not accidental one.

19. It has come in the evidence of P.W. 12 Sanjay Kulkarni whose evidence is at Exhibit 58 and who was working as PSI at the relevant time and attached to Vazirabad Police Station Nanded that, police constable Puri had written letter to the Office of M.S.E.B. for inspecting the house of accused to know whether there was any short circuit of electricity. The police station has received the report of inspection of house. It is filed in the case on 04th December, 1998. M.S.E.B. has reported that, there was no short circuit. He further stated that, the report received by police station shown to him before the Court is the same. However, it appears that, the request of A.P.P. to exhibit the said report was objected by the defence and, therefore, the Court did not allow to exhibit the said report. Nevertheless, it has come in the substantive evidence of P.W. 12, that such report was received from the M.S.E.B. and it is stated in the said report that there was no short circuit of house of accused.

It is also pertinent to note that, if Mangala was asleep, she could not have noticed that due to short circuit the cloths were burn. The defence story that Mangala was sleeping in one room and small child of one year or one and half

year was not sleeping with her, but sleeping with her husband outside the room is also unbelievable. If, even as per the defence version the other children were inside the room no other person including said children have received any burn injury. If at all there was short circuit and cloths were burn which were kept on the rope in that case other children who were sleeping in that room could have also received burn injuries. Though the accused have stated that, they tried to extinguish fire, however non of them sustained even minor burn injury. Therefore, on the whole the story put forth by the defence appears to be completely unbelievable and improbable.

20. At this juncture it is also appropriate to refer to the evidence of P.W. 9/ Bayabai w/o Ganeshlal Bhurewal independent witness who is examined as prosecution witness and her evidence is at Exhibit 47. In her examination in chief she deposed that, Godavaribai is her younger sister. She resides at Nanded in Gawalipura area. This witness had been to her house before about two and half years. She had been to the house of her sister for taking back her daughter Dugeshwari. The house of the accused No. 1 is near to the house of her sister. In the evening of 01.06.1996 she saw the accused No. 1 was beating Mangala when she was seeing the incident she was asked to go away from the place. In the same night she also heard the commotion of Mangala from the house of the accused. She went to the house of accused. She found the smoke was coming out of the house. She saw the Mangala in burn condition. The accused brought Mangala out of the house, wrapped in bed sheet and then she was taken to hospital. This witness has further stated, she went to the hospital at about 10.30 a.m. However, Mangala was not able to talk to her and at about 11.45 she returned to Jalna with her daughter. She has specifically denied in her cross examination that she had not been to the hospital. She has further vehemently denied suggestion of defence in the cross examination that accused No. 1 never assaulted to Mangala in her presence. The evidence of this witness is challenged by the defence counsel on the ground that her statement was recorded by the police after 5 to 6 days after the date of incident. It is admitted by the accused persons in the statement recorded U/Sec. 313 of Cr. P. C. that the house of sister of P.W. 9 Godavaribai is near to their house. While replying question No. 13 all the three accused have stated that the house of the sister of P.W. 9 is near to their house in Gawalipura in Nanded. All the three accused have also admitted that, as per postmortem note Exhibit 29 Mangala died because of 95% burns. Therefore, the substantive evidence of P.W. 9 lends support to prosecution case that the incident had happened in the house of the appellant/accused and further there was beating by accused No. 1 to the deceased Mangala during the fateful night which was witnessed by the P.W. 9 in the evening of 01.06.1996 and incident had happened early in the morning on 02.06.1996. This witness has further stated that during night she heard the commotion of Mangala from the house of accused. Therefore, the evidence of P.W. 9 being an independent witness is very important and it fully supports the prosecution case.

21. The evidence of other prosecution witnesses is challenged by the defence

counsel on the ground that their police statements were recorded after laps of considerable time from the date of incident and, therefore, entire prosecution story is required to be disbelieved. It has come in the evidence of P.W. 5 that his elder brother was hospitalized and he was in critical and serious condition and, therefore, he has to stay with him till 04.06.1996, thereafter, he came to Nanded and lodged report on 04.06.1996. In my opinion, the contention of defence that there is two days delay in lodging F.I.R. and which is not properly explained is required to be rejected. P.W. 5 in his cross examination denied the suggestion that death certificate of his brother is false one, showing the date, that he died on 04.06.1996. Therefore, it clearly appears that, the brother of P.W. 5 died on 04.06.1996. It has also come in the evidence of P.W. 5 that on receiving the telephone call on 02.06.1996 and on receiving telegram immediately his wife and nephew were sent to Nanded. The communication was that, Mangala had received burn injuries and she is hospitalized. Therefore, in my opinion, and as rightly concluded by the Trial Court, the delay in lodging FIR has been properly explained by the prosecution in the facts of this case. Therefore, the submission of learned counsel for the defence that delay is not properly explained is devoid of any merits and same stands rejected.

22. It is admitted position that, Mangala died within seven years from the date of marriage. It has come on record that, marriage of Mangala with accused No. 2 had taken place around three years prior to date of incident. At this juncture it would be relevant to refer to provisions of Section 113B of the Indian Evidence Act.

113B Presumption as to dowry death--.

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

Explanation. For the purposes of this section, "dowry death", shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

23. The evidence of the prosecution witnesses on demand of Rs. 15,000/, ill treatment and harassment is concerned, same has been stated by P.W. 5 to P.W. 9. P.W. 5 Laxman whose evidence is at Exhibit 30 and who is resident of Jalna has stated in his examination in chief that deceased Mangala told him that accused No. 1 to 3 were harassing and beating her for the demand of Rs. 15,000/. He has further stated that, the Mangala who is his daughter got married with the accused No. 2 before two and half to three years before her death. After marriage she started cohabiting with the accused No. 2. She gave birth to son. 33 cri appeal 141.99 After birth of child the accused No. 2 and Mangal came to his house. They came to his house after a year of birth of child. At that time Mangal asked him to pay Rs. 15,000/to her, so that she will be relieved from the

harassment. This witness has further stated that, other accused No. 1 and 3 are also harassing her and beating her for the demand of Rs. 15,000/-. However, he could not pay the amount to his daughter. Then in the days of Diwali accused No. 1 came to his house and demanded Rs. 15,000/-. The complainant expressed his inability to pay the cash. Therefore, the accused No. 1 was annoyed and left the house. Thereafter, there was marriage of Chunilal the brother of accused No. 1 and 2. In the said marriage nephew of this witness Shankarlal attended the marriage. In that marriage also the accused persons asked Shankarlal whether he has brought cash as per the demand of accused. Said fact was told by Shankarlal to the P.W. 5. However, even thereafter P.W. 5 could not pay the said amount. He has further stated that, when Mangala and accused No. 2 came to his house after birth of their child he presented cloths to the accused persons. Therefore, upon perusal of evidence of this witness it is abundantly clear that whatever he has stated appears to be trustworthy. He has stated that, the demand of Rs. 15,000/- was only after the birth of the child. If this witness wanted to make false allegations in that case he would have stated that there was demand after few days from the date of marriage. In his cross examination the suggestion was given to him that the accused never demanded any cash to Mangala, same suggestion was specifically denied by him. Therefore, there is evidence of P.W. 5 complainant that there was demand of Rs. 15,000/- by the accused persons from the Mangala to bring the said amount from him.

(emphasis supplied)

There is also evidence of P.W. 6 Ramesh Dhondulal Dhuldani who stated that, P.W. 5 is his maternal uncle. He further stated that, he use to visit the house of Mangala. He visited the house of Mangala at the time of Rakhipornima. At that time, she told him that there is demand of Rs. 15,000/-. The accused are demanding the said amount. This witness stated that, he assured Mangala that he would inform her father after going to Jalna. He further stated that, he told the complainant by going to Jalna about demand of Rs. 15000/- by accused to Mangala as stated by her.

He has stated in his examination in chief that accused abused him for not bringing the cash, then Mangala intervened and requested the accused not to abuse him. He has further stated that, he had been to the house of accused No. 1 day before the incident. The accused accosted him why he has not brought the cash. They also told him that he should not visit the house unless the cash is brought. They also told him that they should not be blamed if anything happens with Mangala.

Mangala told him to tell all these facts to the complainant. On the next day he learnt that Mangala is admitted in the hospital due to burn. Therefore, the evidence of this witness also supports the prosecution case and evidence of P.W. 5 that there was demand of Rs. 15,000/-. Merely, because his statement is recorded by the police after 8 to 10 days that would not nullify his substantive evidence before the Court that there was demand of Rs. 15,000/- even a day prior

to the date of incident.

24. There is evidence of P.W. 7/Shankar Kaluram Khare who is nephew of complainant P.W. 5. In his evidence also he has stated that in October 1995 both Mangala and accused No. 2 her husband came to the house of complainant and demanded Rs. 15,000/-. The complainant assured them that he will pay the cash later on. Then both of them left the house of the complainant. Thereafter before few days of Diwali he had been to Nanded at the house of accused No. 2. The accused No. 1 and 2 have not allowed him to see Mangala. They asked him whether he has brought Rs. 15,000/-. He replied that he had not brought the cash and they told him that some unwanted thing would happen with Mangala. Mangala then came to him but she was slapped by the accused No. 1 i. e. husband and she was driven inside and then this witness returned to Jalna. He further stated that accused No. 1 came to Jalna. He enquired with the complainant what happened to their demand of Rs. 15,000/-. The complainant told this fact to him. When complainant showed his inability to pay the cash, accused No. 1 left his house in anger saying that some unfortunate thing would happen with Mangala. The P.W. 7 has further stated that, in the month of April after Diwali he visited the house of the accused for the marriage of daughter of the elder brother of accused No. 1 and 2. On that day accused No. 1 and 2 enquired with him what happened to their demand of Rs. 15,000/- and again at that time the accused No. 1 and 2 mentioned that some unfortunate incident would happen with Mangala if their demand is not fulfilled. This witness in his cross examination has stated that, "It is not true that I am deposing falsely that the accused No. 2 slapped Mangala in my presence." He has specifically denied the suggestion that there was no demand of Rs. 15,000/-.

P.W. 8 Sunderlal Belichand Khare was examined and his evidence is at Exhibit 44. In his evidence he has stated that complainant is his uncle. He has also supported the version of other prosecution witnesses that after few days of Diwali of 1995, the accused No. 2 and Mangala had been to the house of P.W. 5/ complainant. At that time accused demanded Rs. 15,000/-. He has also stated the demand by accused No. 1 on the occasion of Diwali when accused No. 1 visited the house of complainant. He has specifically stated that on 02.06.1996 he was in the hospital in Nanded, where the Mangala was admitted. This witness has stated that his uncle P.W. 5 told him to go to Nanded. Therefore, he himself, mother of Mangala and Shankarlal P.W. 7 went to Nanded. P.W. 5 did not come with them because of serious health condition of Mohanlal. After going to Nanded they went to Civil Hospital. Mangala was admitted there. Mangala was unconscious. They could not talk with her. Her body was smelling with kerosene. (emphasis supplied).

Evidence of this witness is not shattered in the cross examination. It appears that suggestion was given to him that he is deposing falsely that Mangala was smelling with kerosene and on the date of incident he has not visited the house accused. However he stated thus, "it is not true that, I am deposing falsely that

Mangala was smelling with kerosene and on the day of incident I had been to the house of the accused. It is not true that I am deposing falsely that the house of accused was cleaned when I visited it." Therefore, the evidence of P.W. 8 is not only on the demand, but he visited the hospital and also house. In his evidence he has stated about demand, smelling of kerosene from the body of Mangala and also the fact that after incident house of the accused was washed.

25. The evidence of P.W. 10 Machindra Laxman Puri is at Exhibit 48. He has stated in his evidence that on 02.06.1996 he was attached to police station Vazirabad. He recorded panchanama of seen of offence in presence of two panchas. He identified the Exhibit 22 shown to him which bears his signature and another signature of P.W. 3. He stated that, contents of said panchanama are true. He specifically stated in his examination in chief that he enquired with the accused No. 1 and he told that no cloths were there on the person of injured. He identified the report and also contents of the report and his signature at Exhibit 49. Therefore, evidence of this witness suggest that he did asked about cloths of the deceased to accused No. 1. However, accused No. 1 showed ignorance about cloths of the deceased. On perusal of Exhibit 49 it appears that the letter is addressed by the Investigating Officer, Police Station Vazirabad, Nanded in which he has stated that, the cloths of the deceased Mangala were not found on the spot. Therefore, they enquired with Shamlal about cloths of the Mangala, however, he told that he is not aware about the cloths of Mangala. It is also mentioned in the said letter that the spot of the incident is cleaned by the water by the accused and nothing is found on the spot. On the spot nothing was found either cloths of the deceased Mangala or any electrical wire laying on the spot due to short circuit.

26. There is evidence of P.W. 12 at Exhibit 58. This witness was working as PSI attached to Police Station Vazirabad at the relevant time. He was on duty in the police station. He stated that he has carried out the inquest panchanama and also the panchanama of seen of offence vide Exhibit 22. He has stated about complaint filed by P.W. 5. As stated earlier this witness has stated that, PHC Puri had written letter to the office of MSEB for inspecting the house of the accused to know whether there was any short circuit of the electricity. They have received the report of inspection of the house. It is filed in this case on 04th December, 1998. The Maharashtra State Electricity Board has reported that, there was no short circuit. The report shown to him before the Court is the same.

27. Therefore, if the evidence of all these prosecution witnesses is examined minutely it does support the prosecution story in material particulars about the demand of Rs. 15,000/by the appellant/accused and also ill treatment on account of non payment of Rs. 15,000/and also harassment to the Mangala. P.W. 9 is independent witness and she has stated about the events taken place in the evening on 01.06.1996 few hours before the actual incident and also about beating by accused to Mangala. It has come in the statement of the accused recorded U/Sec. 313 of Cr. P. C. that, house of sister of P.W. 9 is near to their

house. Therefore, presence of P.W. 9 at the relevant time at the house of her sister has been proved by the prosecution beyond the reasonable doubt.

The IIInd Additional Sessions Judge, Nanded has considered the entire evidence brought on record by the prosecution and accepted the prosecution case. It is not necessary to repeat the discussion or observations or findings recorded by the Trial Court. Suffice it to say that, all the aspects of the matter have been discussed by the Trial Court in detail. The Court has considered the spot panchanama, the panchanama of seen of offence and concluded that when the panchanama of seen of offence was recorded at least some signs of burn would have found. Therefore, if Mangala would have died accidental death, there should have been some signs of accidental burns. The Trial Court has made each and every attempt to find out the truth from the evidence brought on record by the prosecution and also defence and discarded the evidence brought on record by the defence in the nature of dying declarations and other evidence and concluded that Mangala died unnatural death. As stated earlier on independent scrutiny of the evidence brought on record, this Court is convinced that the view taken by the Sessions Court, Nanded is inconsonance with the evidence brought on record on all counts. Therefore, I am of the considered opinion that, the judgment and order impugned in this appeal does not call for any interference. The impugned judgment and order is confirmed. The appeal is devoid of any merit, same stands dismissed. The bail bonds of accused/appellant No. 2 stands cancelled. The Superintendent of Police, Nanded to ensure that the appellant/original accused No. 2 i. e. Shamlal Mohanlal Ahir, surrenders to his bail to undergo remaining part of the sentence.

This Court appreciates the sincere efforts taken by the learned A.P.P. for effectively arguing the matter and rendering proper assistance to this Court.