
(2020) 09 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 1258 Of 2007

State Of Maharashtra	Vs	APPELLANT
Sunil Bharat Kattimani And Ors		RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 306, 498(A), 504, 506
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2020) 09 BOM CK 0015

Hon'ble Judges : Sadhana S. Jadhav, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : P.P. Shinde, Ujwal Agandsurve

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. This Appeal is directed against a judgment and order dated 20th October, 2006 in Sessions Case No. 241 of 2005 whereby the learned Sessions Judge, Solapur acquitted the accused-Respondents herein of the offences punishable under section 302, 498A, 504 and 506 read with section 34 of Indian Penal Code (the penal code).

2. The background facts which led to this Appeal can be stated in brief as under.

(i) Kavita (hereinafter referred to as "the deceased") was the daughter of Dhondappa Bhaurao Kamble (P.W.1 - First Informant) and Rajashree Kamble (P.W.2). The marriage of the deceased was solemnized with accused No. 1 Sunil on 18th December, 2000. After marriage the deceased joined her matrimonial home at Block B-108, Indira Nagar, Vijapur Road, Solapur where the accused No. 1 was residing along with Smt. Annapurna (A/2) his mother, and brother Anil (A/3). Accused No. 1 and deceased were blessed with a girl Aishwarya, in November, 2001.

(ii) The gravamen of indictment against the accused was that after few months of marriage the accused started to harass and ill-treat the deceased. The deceased had passed B.A. 1st year. She was desirous of pursuing further studies. The accused did not allow the deceased to pursue further education. They prevented her from venturing out of the matrimonial home. They suspected her chastity and subjected the deceased to ill-treatment. She was abused, threatened and beaten up. The deceased used to narrate her woes to the first informant on phone as well as on her visits to the parental home.

(iii) On a couple of occasions when the ill-treatment became unbearable the deceased had come to her parental home. Prior to the Dasara festival of the year 2004 the accused had beaten the deceased suspecting her chastity. The deceased came to the parental home and stayed back for about a month. A meeting in the presence of the elders and relatives of the informant and the accused was held. The accused No. 1 promised not to ill-treat the deceased and thereupon the later rejoined her matrimonial home. However, there was no improvement in the behavior of the accused and the accused No. 1 continued to harass and beat deceased at the instigation of accused Nos.2 and 3.

(iv) On 4th May, 2005 at about 12.45 p.m. while the informant was posted at Kalamb police station, he was apprised that the deceased died on account of burn injuries. The informant rushed to the matrimonial home of the deceased at Solapur. The deceased had sustained extensive burn injuries. The body of the deceased was lying in the passage of the bedroom and dining hall of the house of the accused. Tongue was protruding out of her mouth. The informant thus lodged a report against the accused for having committed murder of the deceased by setting her ablaze.

(v) On the strength of the said report, crime was registered at Vijapur Naka police station, Solapur vide C.R.No. 105 of 2005. Investigation commenced thereon. During the course of investigation Mr. Ramesh Sarvade, the then Police Inspector, Vijapur Naka police station visited the scene of occurrence. Panchanama of the scene of occurrence came to be drawn. Inquest on the dead body of the deceased was held. The dead body was sent for postmortem examination. The accused came to be arrested. The investigating officer interrogated the witnesses and recorded their statements. Postmortem report and the cause of death certificate were received. After finding the complicity of the accused for the offences punishable under section 302, 498A, 504 and 506 read with section 34 of Indian Penal Code, the charge sheet came to be lodged against the accused in the Court of jurisdictional Magistrate.

(vi) On committal, the learned Sessions Judge framed charge against the accused for the offences punishable under section 302, 498A, 504 and 506 read with section 34 of Indian Penal Code. The accused adjured their guilt and claimed for trial.

(vii) At the trial the prosecution examined 8 witnesses being Annarao Bhimrao

Birajdar (P.W.1), public witness to the scene of occurrence panchanama, Dhondappa Kamble (P.W.7), the first informant and Rajashree Kamble (P.W.2), the mother of the deceased, Tammaraao Kamble (P.W.3) and Sudhakar Susladi (P.W.5), the relatives of the first informant, Anand Vishwanath Vaidya (P.W.4) the neighbour of the accused, Dr. Subhashchandra Sangameshwar Sardar (P.W.6), the autopsy surgeon, and Ramesh Sarvade (P.W.8), the investigating officer who furnished the details of investigation. After conclusion of the evidence for the prosecution the statements of the accused under section 313 of Code of Criminal Procedure were recorded. The defence of the accused was that of denial and false implication.

(viii) After evaluation of the evidence and material on record the learned Sessions Judge was persuaded to hold that the prosecution did not succeed in establishing the guilt of any of the accused for any of the offences for which they were prosecuted. It was further held that even offence punishable under section 306 of I.P.C. was not made out. Thus the accused came to be acquitted by the impugned judgment and order.

3. Being aggrieved the State has come in Appeal.

4. We have heard Smt. P.P.Shinde, the learned A.P.P. for the State and Mr. Ujwal Agandsurve, the learned counsel for the Respondents-accused at some length. With the assistance of the learned counsels we have carefully perused the evidence and material on record.

5. Mrs. Shinde, the learned A.P.P. mounted a multi-pronged challenge to the impugned judgment. It was urged that the learned Sessions Judge committed a manifest error in returning the finding of not guilty against the accused despite overwhelming incriminating material. The learned Sessions Judge, according to Mrs. Shinde, misdirected himself in losing sight of the fact that the deceased died in the matrimonial home, of which the accused were the ordinary inhabitants. The extensive burn injuries found on the person of the deceased and the attendant circumstances depicted in the scene of occurrence panchanama (Exhibit 19) cumulatively indicate that the deceased was done to death. In the circumstances of the case the accused were enjoined to offer an explanation as to how the deceased met death. No explanation, much less a plausible one, was offered by the accused. This factor if considered in conjunction with the motive for the crime unmistakably brought out in the nature of the continuous cruelty to which the deceased was subjected to, according to learned A.P.P., leads to no other inference than that of the guilt of the accused. Thus, this Court would be justified in interfering with the impugned judgment of acquittal which is wholly unmerited, urged Mrs. Shinde.

6. In opposition to this, Mr. Agandsurve supported the impugned judgment. It was urged that the prosecution witnesses have categorically deposed to about the absence of any of the accused in the house at the time of the occurrence. The deceased had bolted all the doors of the house from inside. Neighbours

gathered after noticing the smoke bellowing out of the window, opened the grill door and found the deceased in flames and smoke. In the light of this evidence there was no occasion for accused to offer explanation regarding the circumstances in which the deceased met the death. Moreover, in the face of material improvements, omissions and contradictions the charge of subjecting the deceased to cruelty was rightly held to be not proved. Once the element of cruelty is not established the entire prosecution case falls through, urged Mr. Agandsurve.

7. To begin with, it may be apposite to note that as an appellate Court this Court is empowered to review the evidence upon which the impugned order of acquittal is based. An order of acquittal is not lightly interfered with because the presumption of innocence of accused is further strengthened by the acquittal. However, if the impugned judgment is perverse and unreasonable and the relevant and convincing material has been unjustifiably discarded, it becomes the duty of the appellate Court to reappraise the evidence and overturn the finding of acquittal. It is trite law that if on the appraisal of evidence two views are reasonably possible and the trial Court has taken a view which favours the accused the appellate Court ought not to set aside the order of acquittal unless it comes to the conclusion that the findings so recorded by the trial Court are perverse, highly unreasonable, based on no evidence or arrived at after excluding the relevant evidence. The appellate Court is enjoined to interfere with an order of acquittal if there is a substantial or compelling reason to do so and not otherwise.

8. A useful reference in this context can be made to a judgment of the Supreme Court in the case of Anil Kumar vs. State of U.P.¹ wherein in the light of the previous pronouncements the parameters were enunciated in the following words:

9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (see Bhagwan Singh vs. State of M.P.). The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If

the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade vs. State of Maharashtra (1973) 2 SCC 793, Ramesh Babulal Doshi vs. State of Gujrat (1996) 9 SCC 225, Jaswant Singh vs. State of Haryana (2000) 11 SCC 484, Raj Kishore Jha vs. State of Bihar (2003) 11 SCC 519, State of Punjab vs. Karnail Singh (2003) 11 SCC 271, State of Punjab vs. Phola Singh (2003) 11 SCC 58 and Suchand Pal vs. Phani Pal (2003) 11 SCC 527.

9. We propose to evaluate the evidence and material on record on the aforesaid touchstone.

10. To start with, the nature of death which the deceased met. Dr. Subhaschandra Sardar (P.W.6) the autopsy surgeon claimed to have noticed the following external injuries.

Superficial to deep burns, reddish black soopy with smell of kerosene on body.

Percentage of burns was as under:

- (i) Head, neck and face 9%
- (ii) Right upper limb 9%
- (iii) Left upper limb 9%
- (iv) Chest, abdomen 18%
- (v) Back 18%
- (vi) Right lower limb 18%
- (vii) Left lower limb 18%
- (viii) Heat crack on both thighs medial aspect.
- (ix) Perinium 1%.

All the injuries were antemortem.

In the opinion of Dr. Sardar (P.W.6) the cause of death was shock due to 100% burns. Dr. Sardar (P.W.6) claimed to have accordingly issued postmortem report (Exhibit 34) and cause of death certificate (Exhibit 35).

11. It would be contextually relevant to note the condition of the body of the deceased found during inquest (Exhibit 23). It records that the deceased had suffered extensive burn injuries on all parts of the body. Hairs were burnt. Eyes and face were burnt. Tongue was protruding out. Upper limbs were burnt. Both legs were completely burnt. Neck, chest and stomach completely burnt and skin had peeled off at places. Clothes and undergarments were burnt to ashes.

12. Indubitably the deceased met with an unnatural death. The circumstances in which the deceased was found lying in almost roasted condition require

consideration. The situation at the scene of occurrence brought out through the testimony of Mr. Annarao Birajdar (P.W.1), independent witness, and scene of occurrence panchanama (Exhibit 19) sheds light.

13. Mr. Birajdar (P.W.1) apprised the Court that the house of the accused consisted of 5-6 rooms. The body of the deceased was lying in the backside bedroom of the house. A kerosene tin and matchstick box were also found thereat. Those articles along with a shirt and a trouser, which smelt of kerosene, were seized under the scene of occurrence panchanama. During the course of cross examination of Mr. Birajdar (P.W.1) it was elicited that the bungalow of the accused faces North. It has a compound wall. A road runs East-West in front of the said bungalow. There are residential houses adjacent to and across the said bungalow. In an unguarded moment, Birajdar (P.W.1) conceded that since there was darkness in the bedroom where the incident had occurred they had not actually entered in to the said room. Nonetheless, the situation depicted in the scene of occurrence panchanama (Exhibit 19) deserves consideration as the claim of investigating officer Ramesh Sarvade (P.W.8) on the aspect of visit to the scene of occurrence and drawing of scene of occurrence panchanama (Exhibit 19) could not be impeached.

14. The scene of occurrence panchanama (Exhibit 19) records that the body of the deceased was lying on the floor in between the dining room and bedroom. Part of the body was in the dining hall and the rest in the bedroom. The floor near the door of the dining hall which opened in the bedroom smelt of kerosene. Half burnt pieces of clothes and ash (of cloths) were also found thereat. The wall in which the said door was fitted, the northern wall of the dining hall, the door fitted therein and the ceiling above the said wall were blackened with smoke. Towards east of the said door at a distance of 2 ft two half burnt matchsticks and at southern side at a distance of 1 ft a big matchstick box were found. A tin containing kerosene was found near the southern wall.

15. The scene of occurrence panchanama (Exhibit 19) further records that the plywood on the eastern wall of the bedroom was burnt. On the floor half burnt pieces of saree, and undergarments and ash of clothes smelling kerosene were found strewn. A telephone instrument, kept on an iron chair, was burnt and melted. Cables were also burnt. All the four walls of bedroom were blackened. Electric cable and a switch board were burnt. A shirt and trouser lying on the bed smelt of kerosene.

16. In the backdrop of the nature of the injuries found on the body of the deceased and the extensive traces of the damage caused in the dining hall and bedroom it becomes evident that there was in a sense a conflagration of a lesser scale. The traces of smoke, kerosene residue and burnt pieces of clothes and ash in both the western part of the dining hall and the bedroom lead to a legitimate inference that the deceased moved in the engulfed state in the dining hall and bedroom. In the context of the charge against the accused of having caused the death of the deceased the question as to whether the deceased died on account

of a cause other than shock due to burn injuries warrants consideration.

17. The postmortem report (Exhibit 34) provides a legitimate answer. It records that black soot particles were seen in larynx and trachea. This implies that the deceased was alive when she was engulfed in fire and inhaled the combusted air. If the soot particles are found in larynx, trachea and in the stomach, it is generally a case of conflagration. A profitable reference in this context can be made to the observations of the Supreme Court in the case of *Vijay Kumar Arora vs. State*.²

33. "The medical evidence on record makes it evident that soot particles were present in the stomach of the deceased. According to Dr. Bernard Knight who has authored 'Medical Jurisprudence and Toxicology' if soot particles are found in Larynx Trachea or into stomach, it is commonly a case of conflagration. The presence of soot particles in the stomach indicates that the injuries could have been sustained by the deceased only in a conflagration and that too in a closed area.

18. At this juncture, the reference to the C.A. report (Exhibit 36) also becomes apposite. The Chemical Analyst reported that upon general and specific chemical testing of the viscera no poison was detected. The situation which thus obtains is that the deceased died on account of shock due to burn injuries suffered in the conflagration. The possibility of postmortem burn injuries is thus ruled out.

19. The extent of the injuries, degree thereof and the situation at the scene of occurrence noted above also rule out the possibility of the deceased having sustained the injuries accidentally. The question as to whether the death was suicidal or homicidal however warrants determination.

20. The evidence of the first informant and his relations is of no assistance on the aspect of the nature of death, save and except the inference to be drawn in the event the allegation of cruelty is established. To this end, recourse to the testimony of Anand Vaidya (P.W.4) the neighbor of the accused becomes necessary.

21. Anand Vaidya (P.W.4) informed the Court that on the day of occurrence at about 12.30 p.m. while he was reading a news paper he noticed that smoke was billowing out of the window of the house of the accused which is located across the road. Anand Vaidya (P.W.4) claimed to have crossed over the compound wall of the house of the accused and jumped in to the courtyard. He gave alarm and called the boys in the neighborhood. They noticed that no door or window of the house was open. The main grill door was opened by one of the boys by removing its latch by inserting finger. Anand Vaidya (P.W.4) wants the Court to believe that Aishwariya was in the first bedroom. She was taken out. On opening the door of the backside room flames of fire and smoke came out. Due to suffocation he did not enter into the said room. Thereafter, the accused Nos. 1 and 3 came thereat.

22. As Mr. Anand Vaidya (P.W.4) did not fully subscribe to the prosecution version

as regards the ill-treatment allegedly meted out to the deceased, Mr. Anand Vaidya (P.W.4) was cross examined by the learned A.P.P. with the permission of the Court. However, the cross examination was restricted to the aspect of being in the know of the cruelty to which the deceased was subjected to.

23. The testimony of Anand Vaidya (P.W.4) thus indicates when he and the other persons in the neighborhood entered into the house after noticing the smoke, the deceased and her daughter Aaishwairya were in the house. Flames of fire and smoke gushed out when the door of the backside room was pushed. The deceased was engulfed in the said conflagration.

24. The aforesaid evidence and material cumulatively leads to an inference that the deceased met an unnatural death in the house of the accused. Laying emphasis on this circumstance, the learned A.P.P. would urge that the total absence of explanation on the part of the accused as to the circumstances in which the deceased suffered extensive burn injuries, especially in the context of the situation at the scene of occurrence, points to the complicity of the accused. In the circumstances, according to learned A.P.P., the onus lay upon the accused to offer a plausible explanation. In the absence thereof, the factum of unnatural death of the deceased coupled with the evidence of ill-treatment meted out to the deceased leads to no other inference than that of the guilt of the accused, urged Mrs. Shinde.

25. Per contra, Mr. Agansurve would stoutly submit that the evidence led by the prosecution even if taken at par does not establish the presence of any of the accused in the house at the time of the occurrence. Nor there is any evidence to show that soon before the occurrence any of the accused was found either in the house or in vicinity thereof. In absence of such evidence, according to Mr. Agansurve, there was no occasion for accused to offer explanation regarding the cause of death of the deceased. Thus, mere factum of unnatural death of deceased by itself cannot incriminate the accused, urged Mr. Agansurve.

26. On the first principles if a murder of wife is alleged to have been committed by a husband within the four walls of a room which was occupied by them, the sheer weight of the situation warrants an explanation by the husband as to the circumstances of the transaction which led to the death of the deceased. Albeit, this is always subject to the facts of the case.

27. In the case of *Swamy Shraddhnanda vs. State of Karnataka*³ it was enunciated that if it is proved that the deceased died in an unnatural circumstance in her bedroom which was occupied only by her and her husband, law requires her husband to offer an explanation in this behalf. The Supreme Court went on to administer a note of caution against generalized application of the aforesaid principle and observed that "We, however, do not intend to lay down a general rule in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused".

28. In the case of Trimukh Maroti Kirkan vs. State of Maharashtra,⁴ wherein the deceased wife had died due to asphyxia and the accused husband and his relatives reported that the deceased died due to snake bite (which was found out to be a false explanation), the Supreme Court after adverting to the provisions of section 106 of the Indian Evidence Act expounded the nature of onus, in such a case, in the following words:

22. "Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. (emphasis supplied)

29. In the case at hand, undoubtedly there is no witness to the actual occurrence of the deceased getting engulfed in fire. The prosecution case rests on circumstantial evidence. In the light of the well recognized principles of appraisal of circumstantial evidence, sufficiency and reliability of the evidence is thus required to be tested.

30. An endeavour was made on behalf of the prosecution, to bank upon the circumstances, like the extensive and total burn injuries suffered by the deceased, the traces of fire and smoke at multiple places in the bedroom and dining hall, the presence of baby Aishwarya in the house, the seizure of the shirt and trouser of the accused No.1, which smelt of kerosene, and the cruelty to which the deceased was continuously subjected to and which furnished the motive for the crime. The absence of explanation on the part of the accused in the aforesaid backdrop furnishes an additional link and a strong circumstance against the accused, urged Mrs. Shinde.

31. Undoubtedly, the accused were the ordinary inhabitants of the house. The evidence as regards the proof of presence of the accused at the time of occurrence assumes significance. Mr. Anand Vaidya (P.W.4) testified to the fact that accused Nos. 1 and 3 came at the scene of occurrence after they entered into the house, took out Aishwarya and efforts were made to extinguish the fire. During the course of the cross examination it was further elicited that when they entered into the house neither any male member i.e. accused Nos. 1 and 3, nor accused No. 2 was present. The accused were informed about the occurrence on their cell phones. Thereafter, under 5 minutes, accused came thereat. There is evidence to indicate that the accused No. 2 was employed as a clerk with Zilla Parishad, Solapur. The accused No. 1 was running a welding works. The time of occurrence is not such that the presence of working persons is expected at the household. Nor, there is any evidence to show the presence of any of the accused in the house or in the vicinity thereof at a time proximate to the occurrence. The time factor is of critical significance as the interval between the breaking out of

fire and consequent emitting of smoke is generally short.

32. Thus, an inference of the authorship of the act of setting the deceased on fire cannot be drawn merely on the basis of the extent and degree of burn injuries suffered by the deceased and the attendant circumstances, in the absence of any material which unerringly establishes the nexus between the act and the accused.

33. As the accused have been charged for having subjected the deceased to cruelty, the failure of the prosecution to establish the homicidal nature of the death and the accused being the authors thereof does not put an end to the matter. The question as to whether the accused subjected the deceased to such cruelty as would drive her to commit suicide crops up for consideration.

34. It is true that a specific charge for the offence of abetment of suicide punishable under section 306 of Indian Penal Code was not framed. Yet, as indicated above, the learned Sessions Judge proceeded to evaluate the evidence on the aspect of complicity for the offence punishable under section 306 of Indian Penal Code as well and held that even an offence punishable under section 306 was not made out.

35. An omission to frame a charge by itself does not vitiate the proceeding unless prejudice is caused to the accused. If the accused were aware of the substance of the accusation in respect of which they were being prosecuted the absence of a formal charge cannot be said to have resulted in a prejudice to the accused.

36. There was a cleavage of opinion as to whether husband and his relatives who were charged under section 302 of Indian Penal Code can be convicted for the offence punishable under section 306 of Indian Penal Code where the evidence disclosed that on account of cruelty the wife died by suicide, in the cases of *Lakhjit Singh vs. State of Punjab*⁵ and *Sangaraboina Sreenu vs. State of A.P.*⁶

37. A three Judge bench of the Supreme Court in the case of *Dalbir Singh vs. State of U.P.*⁷ after referring to the judgments in the cases of (i) *Willie Slaney v. State of Madhya Pradesh* AIR 1956 SC 116 and (ii) *Gurbachan Singh v. State of Punjab* AIR 1957 SC 623 resolved the conflict and held that in such a situation the accused can be convicted for the offence punishable under section 306 of Indian Penal Code though no formal charge was framed. The observations of the Supreme Court in paragraph No.17 are instructive; they read as under:

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main

facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangarabonia Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

38. In the case at hand, during the course of cross examination of Tammaraao (P.W. 3) and Sudhakar Sosladi (P.W.5) a faint attempt was made to suggest that the witnesses gained an impression that the deceased died by suicide. This implies that in the backdrop of the charge of cruelty the accused were aware of the indictment for which they were being prosecuted i.e. abetment of suicide by the deceased.

39. This propels us to appraisal of evidence on the charge of cruelty. The learned Sessions Judge was of the view that in the light of the evidence and material, the prosecution failed to establish cruelty within the meaning of clause (a) of the Explanation to section 498A. Whether this approach of the learned Sessions Judge is justifiable ?

40. A brief resume of the evidence on the aspect of cruelty would assist us in arriving at a legitimate answer. Rajashree Kamble (P.W.2), mother of the deceased, unfolded the prosecution case. Rajashree Kamble (P.W.2) wants the Court to believe that after few months of the marriage the accused No. 1 started to suspect the chastity of the deceased and on that count the deceased was subjected to harassment. Rajashree Kamble (P.W.2) has deposed to three instances of cruelty.

41. First, on 2nd February, 2002 accused No. 1 beat the deceased severely and therefore the deceased had gone to the house of Rajashree's sister, who was then residing at Indi, Dist. Bijapur. Rajashree Kamble (P.W.2) claimed to have rushed to Indi from Aurangabad and found that the face of the deceased was swollen and there were marks of injuries on her leg. The deceased was taken to Aurangabad. The accused No. 1 came at Aurangabad to fetch the deceased. As the accused No. 1 promised not to ill-treat the deceased, the later accompanied the accused to her matrimonial home. The second incident is of the year 2003 which allegedly occurred 9-10 days prior to Nagpanchami festival. On being informed by the deceased that accused No. 1 beat the deceased, Rajashree Kamble (P.W.2) claimed to have requested Nagappa Koli, her cousin, who was residing at Solapur, to take the deceased to his home. On the next date, Rajashree Kamble (P.W.2) and first informant came to Solapur and took the deceased to Aurangabad alongwith Aishwarya. Again accused No. 1 came to Aurangabad to fetch the deceased. Third incident deposed to by Rajashree Kamble (P.W.2) allegedly occurred on 27th February, 2004, by which time the informant had shifted to Solapur. On that day, the accused beat the deceased and thus the later had come to her parental home and informed them that she would not resume cohabitation with accused No. 1 on account of ill-treatment.

42. Rajashree Kamble (P.W.2) further wants the Court to believe that on 27th May, 2004 there was a meeting at her house in connection with marital dispute and her relatives including Tammarao Kamble (P.W.3) and Sudhakar Susladipe (P.W.5) were present in the said meeting. Accused No. 1 was questioned as to why he suspected the chastity of the deceased and ill-treated her. Accused No. 1 promised not to ill-treat and offered to reside separately from accused Nos. 2 and 3. Thereupon the deceased was sent with accused No. 1 to her matrimonial home.

43. This version of Rajashree Kamble (P.W.2) was sought to be corroborated by Dhondappa Kamble (P.W.7) the first informant. Dhondappa Kamble (P.W.7) was in unison with Rajashree Kamble (P.W.2) on the point that the deceased was desirous of pursuing further education but the accused did not allow her to pursue the education as they suspected her chastity.

44. Tammarao Kamble(P.W.3) and Sudhakar Susladi (P.W.5) professed to lend support to the first informant and Rajashree Kamble (P.W.2) on the aspect of the meeting which was held on 27 th May, 2004 and endeavoured to impress upon the Court that in their presence accused No. 1 promised not to ill-treat the deceased and to reside separately, along with the deceased, from his mother and brother.

45. The tenor of the evidence indicates that the prosecution witnesses want the Court to believe that the deceased was subjected to harassment as the accused suspected her chastity. This suspicion drove the accused to restrain the deceased from pursuing education. Thus, the deceased was subjected to harassment.

46. It is trite that the question as to whether a married woman was subjected to cruelty in order to drive her to commit suicide or to cause grave injury or danger to her life, limb or health is required to be determined keeping in view all the relevant factors including the nature of the marital relationship between husband and wife, their situation in life, cultural and temperamental context, the society they were exposed to and the circumstances which may affect their physical and mental state. In this premise, the manner in which the prosecution witnesses fared in the cross examination is of significance.

47. To begin with, the veracity of allegation that the deceased was not allowed to pursue education, which according to the prosecution witnesses, was the genesis of the marital discord. Though Rajashree Kamble (P.W.2) was evasive on this aspect yet Dhondappa Kamble (P.W.7) conceded in the cross examination in no uncertain terms that the deceased had only passed 12th standard at the time of her marriage. The deceased appeared for the B.A. Part-I examination as an external student at Aurangabad in the month of March-April, 2003. The deceased had failed in two of the subjects of B.A. Part I. Dhondappa Kamble (P.W.7) went on to admit that if the deceased had to appear for the examination at Solapur then it was necessary for her to obtain leaving certificate from the educational institution in which she was then pursuing studies.

48. The aforesaid admission runs counter to the claim of prosecution witnesses. The deceased had appeared for B.A. Part-I examination in the year 2003, almost three years after her marriage. It is not the prosecution case that the deceased appeared for B.A. Part-I examination at Aurangabad as the accused did not allow her to pursue education at Solapur and thus dispute arose. The allegation that the accused suspected the chastity of the deceased was also sought to be connected with the reluctance of the accused to allow the deceased to pursue education. The evidence to the contrary thus impairs the veracity of the said allegation as well.

49. It would be contextually relevant to note that the allegation that the accused suspected the chastity of the deceased was general in nature. It was elicited in the cross examination of Dhondappa Kamble (P.W.7) that the accused never complained to him about the attitude of the deceased. Nor the accused complained or made any grievance about the character of the deceased. In the absence of the context in relation to which the accused allegedly suspected the chastity of the deceased, general allegation may not command implicit reliance especially when the primary allegation of the accused restraining the deceased from pursuing education is not proved.

50. To add to this, the evidence of prosecution witnesses blisters with material omissions and improvements. Rajashree Kamble (P.W.2) conceded not to have stated before the police that when she met the deceased at Indi, she had found that her face was swollen and there was injury to her leg. As regards the second incident of the year 2003 preceding Nagpanchami, it was brought in her cross examination that she did not state before the police that the deceased had informed her that accused beat her suspecting her chastity. Identical omission was elicited regarding third incident of alleged beating by the accused.

51. Omissions in respect of the alleged incident of April, 2004, when the deceased was allegedly beaten by the accused and at that time the face of the deceased was swollen, were also brought out in the cross examination of Dhondappa Kamble (P.W.7). He conceded that he did not take the deceased to any hospital for treatment nor lodged report or gave notice to the accused in respect of alleged ill-treatment.

52. In case of matrimonial dispute, the paramount objective is often not to escalate the things and preserve the marital bond. Non lodging of the report or taking precipitative steps in the event of harassment does not detract materiality from the claim of the parents of the deceased. However, the omissions elicited in the cross examination of Dhondappa Kamble (P.W.7) and Rajashree Kamble (P.W.2) cannot be said to be immaterial or inconsequential. The facts that the deceased was beaten up and there were marks of violence on her person were notorious, which the witnesses could not have missed to state.

53. In the context of meeting dated 27th May, 2004, it was brought out in the cross examination of Tammaraao Kamble (P.W.3) that in the said meeting usual

grievances of husband and wife were raised. The elderly persons gave advise to accused No. 1 and the deceased. Thereafter, the accused and the deceased agreed to cohabit . Sudhakar Susladi (P.W.5) also conceded that in the said meeting the deceased and accused No. 1 put-forth their respective grievances. The elderly persons reasoned with them and they amicably resolved the dispute.

54. In the context of aforesaid evidence, the learned Sessions Judge was of the view that the fact that whenever the deceased left the matrimonial home and came to reside at her parental home, on account of marital discord, accused No. 1 immediately rushed to her parental home to fetch her, indicated that the marital bond was strong. This inference drawn by the learned Sessions Judge cannot be said to be unjustifiable. There is evidence to indicate that in the year 2003, while the deceased was residing at her parental home at Aurangabad, the accused No. 1 came to fetch her. The informant declined to send the deceased with accused No. 1. However, after mutual discussion the deceased agreed to accompany accused No. 1 to her matrimonial home. It was further brought out in the cross examination of Dhondappa Kamble (P.W.7) that the accused No. 1 had made attempts to obtain dealership of petrol pump in the name of the deceased. These factors cumulatively indicate that the marital bond between accused No. 1 and the deceased had the elements of love, longing and trust.

55. The situation which thus obtains is that the claim of the prosecution witnesses that the accused subjected the deceased to cruelty primarily for the reason that they suspected her chastity does not appear nearer to the truth. Indeed the evidence indicates that there was marital discord and the accused No. 1 had promised to reside separately from his mother and brother. Even if we assume that the deceased resented cohabitation with accused Nos. 2 and 3 and the failure of the accused to honour the said promise, it would not bring the conduct of the accused within the dragnet of clause (a) of the Explanation to Section 498A of the Indian Penal Code. On an independent evaluation, we are not persuaded to agree with the submission on behalf of the prosecution that the accused subjected the deceased to cruelty.

56 It is true that the concern for Aishwarya's future ought to have dissuaded the deceased from taking the extreme step. Another circumstance of finding the shirt and trouser of accused No. 1, which smelt of kerosene, puts the Court on guard. But we find that there is evidence to show that, on being called, the accused No. 1 rushed into the house, he had changed his clothes and those clothes were seized, as recorded in the panchnama (Exhibit 24) of seizure of clothes of Accused Nos. 2 and 3. Even otherwise, these circumstances are not of conclusive tendency. The prosecution case, thus hinges to the thread of unnatural death which the deceased met in the matrimonial home. The said circumstance, by itself, is not sufficient to fasten the liability on the accused.

57. The conspectus of the aforesaid consideration is that we do not find any substantial or compelling reason to interfere with the impugned order of acquittal. The Appeal thus deserves to be dismissed. Hence, the following order.

58. The Appeal stands dismissed.