

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
ASHOK CHOTELAL SHUKLA

DATE OF JUDGMENT: 01/08/1997

BENCH:
G.N. RAY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

This appeal, by the State of Maharashtra is Directed against the common judgment and order passed by the Bombay High Court, in Confirmation Case No. 4 of 1986 and Criminal Appeal No. 288 of 1986. The High Court reversed the Judgment of the Court of Sessions for Greater Bombay in Sessions Case No. 585 of 1984 convicting the respondent under section 498A IPC for subjecting his wife Vibha to cruelty and under section 302 IPC for causing her death.

The respondent married Vibha on 29.5.1981. Vibha was the daughter of Chandrakant Shukla, an uneducated person, who started his life as a salesman, but eventually switched over to business and in due course of time became an owner of 15 flour mills and 3 buildings. He had four daughters including Vibha. Vibha had studied upto first year B.Sc.. Vibha's family was staying at Jogeshwari. At the time of his marriage the respondent was staying with his father Chotelal who was then an Assistant Commissioner of police in Bombay. They were staying in a Government flat at Dadar. The respondent was then serving in local concern. He had obtained some qualification in engineering from a foreign private institution. It was the prosecution case that the proposal had come from the respondent's side for the hand of Vibha and during further negotiations respondent's father had demanded dowry of Rs. 1,50,000. Ultimately, Chandrakant had agreed to pay Rs. 1,00,000 as dowry inclusive of jewellery, utensils and clothes. After their marriage the respondent and Vibha had started staying in a flat at Mulund which belonged to the respondent's father. Vibha's father Chandrakant was required to pay money for utensils, gas connection and other articles required for setting up respondent's home at Mulund. It was also the prosecution case that on the very first visit by the parents of Vibha to the respondent's father's flat at Dadar, the respondent's father had insulted Vibha's mother Pushpa. He considered it belows his dignity and status to talk to the parents of vibha as they were uneducated. The prosecution case further was that in September or October, 1981 the respondent decided to give up the job and set up a plastic factory of

his own. He wanted Vibha's father to give money for that purpose. Vibha's father to be a guarantor and also obtained his signatures on some loan papers. The respondent, however, did not invite him on the opening day of the factory; but, when he went on his own to the factory after about 10 days the respondents had told him that he needed more money to run his factory. thereupon he had paid Rs. 30,000 to the respondent. That was in November or December, 1981.

Vibha was by that time pregnant so she went to her parent's house at Jogeshwari in January, 1982 for delivery. she gave birth to a female child on 27.3.1982. She had to undergo a Caesarean operation. even though the respondent and his parents were informed about the operation and birth of the female child none of them visited the hospital at the time of the operation. even thereafter the parents of the respondent did not visit the hospital to inquire about the health of Vibha or to see the female child. None of them remained present on 7th April, 1982 the day on which her naming ceremony was performed. The female child was named Rachna. After about four or five days Rachna became ill and was admitted in a hospital for about 15 days. Only on the next day the respondent had gone to the hospital but his parents had not visited the hospital at all. In may, 1982 the respondent had visited Vibha's father's house at jogeshwari and demanded rs. 5,000 as that amount was needed by him, vibha's father had paid that amount. On the same day vibha along with her daughter Rachna and sister Sushma had gone to Vibha's in law's house at Dadar. Vibha was allowed to stay but the respondent had told sushma to take Rachna back and when Sushma had shown her inability to take the child back the respondent had told her to place the child under tyres of a car. On vibha's request not to quarrel Sushma had gone back with the child who was brought up thereafter by the parents of Vibha.

It was also the prosecution case that by this time at the instance of the respondent Vibha had withdrawn rs. 15,000 from her bank account and paid to the respondent. During one of his visits to Vibha's parent's house the respondent had stated to them that he had no love and affection for Rachna or even for Vibha and that he was more interested in money. Right from September-October, 1981 the respondent and his parents were harassing her for money but she was tolerating the harassment with the hope of better days in future. On 26.11.1983 possibly because the situation became intolerable Vibha had telephoned her father that she was being harassed by the respondent and his parents and that he should come and take her and back immediately. When Vibha's father had gone there she was found crying. When he had inquired about the reason, respondent's father had replied that the respondent was in need of Rs. 30,000 and that he should pay that amount. When Vibha's father had told him to take his daughter back. He was thus forced to take Vibha back to his house at Jogeshwari. It was only because of the apology and assurance given by the respondent on the Next day, that he would treat her well that Vibha's parents had sent her back, even though she was not willing to go. Between 27.11.1983 and 22.6.1984 Vibha had visited her parent's house on 3 or 4 occasions to see her child and on all those occasion she had complained about the harassment given to her for the sake of money.

On 22.6.1984 she had sent a telephonic message to her parents that her mother should be sent with her daughter at Mulund on the next day as she was thereafter to go to Dadar and stay there for few days. Therefore, on 23.6.1984, Vibha's mother Pushpa (PW-8) and her sister Usha (PW -2)

along with the child went in their jeep to Mulund. the driver and Rachna first went up in a lift. The respondent did not allow the driver to enter the flat. By the time Pushpa and Sushma reached the flat child Rachna had started crying so they told the driver to take her down. Sushma pressed the bell for about 10 minutes but the respondent did not open the door. They could hear the respondent uttering abusive words from inside the flat. When the respondent opened the door and they entered the flat they found that Vibha was burning in flames and was lying on the floor of the drawing room. The respondent was found not taking any initiative for extinguishing the fire. So Sushma pulled a curtain and extinguished the fire. Thereafter when Pushpa inquired as to what had happened Vibha had told her that Ashok Ne Mujhe Jala Diya (Ashok has burnt me). Pushpa then requested he respondent at least to call a doctor. Thereupon the respondent went down, sat in the jeep of Vibha's father, went to a hospital and got himself admitted there instead of sending a doctor for treatment of Vibha. One of the neighbours of the respondent called a doctor who gave some preliminary treatment to Vibha. One of the neighbours of the respondent called a doctor who gave some preliminary treatment to Vibha and took her to Sion Hospital. By that time Dr. Shah made arrangements for Getting her admitted Vibha's father had also arrived there and when he inquired from Vibha as to what had happened she told him that she was burnt by Ashok. The police was informed, a case was registered and ultimately the respondent was chargesheeted and tried for committing the offences punishable under Sections 498A and 302 IPC.

The defence of the accused was that because he had become fat and bulky and his face was disfigured because of an attack of small pox after the marriage and as the parents of Vibha believed that he had taken to smoking and drinking and was in a bad company, they thought that they had committed a mistake in getting their daughter married with him and therefore wanted her to take a divorce. That was the reason why the parents of Vibha were not sending Rachna to his house even though he was willing to keep her. As regards the incident on 23.6.1984, his version was that while he was talking with Prakash Tambe (PW-9) and Maheshchandra Tiwari (PW-10) in the drawing room driver Vijay Gari Yadav (PW-11) came there with Rachna. As Rachna started crying he shouted for Vibha. At that time Vibha rushed into the drawing room in burning condition. On seeing Vibha burning Tambe, Tiwari and Yadav ran out of the flat. At that moment Pushpa and Sushma entered the flat and started shouting 'Aag Laga Gaya'. While extinguishing the fire with the help of a curtain he received burn injuries on his hands and face, so he went to a private hospital and got himself admitted there. He did not explain the other incriminating circumstances.

In order to prove the charge of cruelty, prosecution had relied upon the following circumstances and incidents, as disclosed from the evidence of Chandrakant (PW-7), Pushpa (PW-8), Usha (PW-2), Sushma (PW-12) and Mrs. Wagle (PW-13):-

- 1) insult of Vibha's parents by respondent's father when they had gone to the house of respondent's parents at Dadar, first time after the marriage of Vibha;
- 2) attitude of the parents of the respondent at the time of delivery of Vibha;
- 3) attitude of the parents of the respondent at the time of delivery of Vibha;
- 4) attitude of the parents of the respondent while Rachna was required to be Hospitalised for a fortnight;

- 5) not allowing rachna to remain in their house when vibha returned after delivery;
- 6) no love and affection shown by the respondent and his parents for rachna;
- 7) incident of 26th November, 1983 when the respondent and his father told Vibha's father to take her back;
- 8) demand of dowry and payments made by Vibha's father Chandrakant (PW-7);
- 9) not giving utensils and other household articles to Vibha by the parents of the respondent when she and the respondent started staying at the Mulund flat and requiring the parents of Vibha to purchase such articles; and
- 10) demands for money made by the respondent and his father for the business of the respondent.

On the basis of first seven incidents/circumstances it was contended by the state that the respondent had by his wilful conduct caused Cruelty to Vibha. The remaining three circumstances were relied upon in support of its contention that the respondent had harassed Vibha with a view to coerce her and her father to meet the unlawful demands for money and/or that the harassment was on account of failure by her and her father to meet such demands.

The trial court held the first incident as not proved. Circumstance number 2 was held as no circumstance against the respondent. As regards the third circumstance the trial court, in absence of consistent evidence as to how the invitation was extended to the parents of the respondent and in view of the fact that they were not personally invited but the invitation was extended only over telephone, held that their not attending the function, was not indicative of any intention to harass. The trial court further held that in any case their indifference and improper attitude could not be regarded as a circumstance against the respondent. In absence of any evidence to show that the respondent himself was informed about the naming ceremony, the trial court held that his remaining absent could not be regarded as a wilful conduct intended to cause cruelty. Incidents/circumstances at serial numbers five six and seven were held proved. Fifth circumstance was held sufficient to establish cruelty under section 498A IPC. Sixth circumstance was held an act of torture amounting to cruelty. Seventh circumstance was held an act of cruelty. the trial court further held that merely because the respondent had apologised on the next day and assured good treatment to Vibha in future, the said act of cruelty did not get wiped out. Thus relying upon circumstances/incidents at serial numbers 5, 6 and 7 the trial court held that cruelty as explained by Explanation No. 1 of Section 498A was satisfactorily proved by the prosecution.

Out of circumstances numbers 8,9 and 10 circumstance number 8 was held not proved. Circumstance number 9 was not considered as an unlawful demand amounting to cruelty. Only circumstance number 10 was held proved and the trial court considered such demands as acts of harassment contemplated by the second Explanation to section 498A IPC.

In order to prove the charge of murder prosecution had relied upon:-

- i) Motive, as disclosed by the evidence of Chandrakant (PW-7), Pushpa (PW-8), Usha (PW-2), Sushma (PW-12) and Mrs. Wagle (PW-13);
- ii) evidence of Usha (PW-2) and Pushpa (PW-8) as regards the events which took place on 23.6.1984;
- iii) evidence of hostile witnesses Prakash Tambe (PW-9), Maheshchandra Tiwari (PW-10) and Vijay Hari Yadav (PW-

- 11);
- IV) The circumstances disclosed by the scene of offence-panchnama;
- v) Immediate conduct of the respondent; and
- vi) Dying declarations and medical evidence.

The trial court believed that the respondent was in need of money for his business, that he was harassing Vibha with a view to coerce her to get money from her father and that Vibha's father had shown his unwillingness to give more money to him. It, therefore, held that, after having lost hope of getting money from Vibha's father, the respondent had enough motive to kill her. The trial Court believed that the hostile witnesses Tambe (PW-9) and Tiwari (pw-10) had gone to the respondent's flat on 23.6.1984 at about 2.15 P.M. but held that it was not possible to accept their version about the main incident as they were not telling the truth. It disbelieved their version that when driver Yadav (PW-11) came, they opened the door of the flat whereupon Yadav came inside and talked with the respondent, and that when Rachna started crying the respondent shouted 'Vibha-Vibha' and at that time Vibha came into the drawing room in flames. After considering their evidence along with the evidence of driver Yadav (PW-11), who had also turned hostile, the trial court held that ; (i) driver Yadav had not entered the flat along with Rachna, (ii) Vibha had come to the drawing room in burning condition and thereafter Tambe and Tiwari had rushed out of the flat, and (iii) when tambe and Tiwari rushed out of the flat, driver Yadav , who had by that time reached the flat along with Rachna, had pressed the door bell, but the respondent closed the door and did not allow him to enter into the flat.

The trial Court found the evidence of Usha (PW-2) and Pushpa (PW-8) as reliable and true and held that when they reached the 5th floor they saw tow persons hastily going down stairs, that they told driver Yadav to take rachna down stairs as she was crying that Usha pressed the door bell for about ten minutes, but the respondent did not open the door, that when he opened the door and they entered the flat they saw vibha burning and lying in the drawing room, that Usha (PW-2) pulled a curtain and tried to extinguish the fire and that Pushpa (PW-8) had to request the respondent to call a doctor.

Considering their evidence together will the picture emerging from the scene of offence Panchnama the trial court held as under:-

"Considering the scene of offence it appears that Vibha was burnt not in the drawing room but major part of the burning has taken place in the passage between the drawing room and the bed room,. It is also in evidence of PW. 2 Mrs. usha that the oil can Court Article 4 was lying in drawing room and it is argued by the learned counsel for the prosecution that it is impossible to believe that a burning lady would carry oil can in her hands carrying it from bedroom to drawing room. therefore, it can safely be inferred that 5 or 10 minutes after P.W. 9 and P.W.. 10 Tiwari left the flat Vibha was burning and ultimately she fell down burning in the drawing room on

the carpet due to which partly carpet was burnt and at that stage the fire must have been at its fag end and at that time the door was opened and therefore, curtain was used to extinguish the fire with the result that a very small patch of the curtain is found burnt. If the fire was in such huge flames at the time when P.W.. 8 were to extinguish it, the whole curtain would have got burnt. That also pre-supposes that earlier to that no attempt seems to have been made with the use of that curtain to extinguish the fire. Nothing can be said about the use of abusive words or shouts of Vibha witnesses it does appear that they had entered in the flat when Vibha was in the last stage of her burning. Because of which both these witnesses did not get any burn injuries. The fact that sofa chair was also partly burnt court Article 1 is proved and there is no reason why we should disbelieve P.W. 2 Mrs. Usha when she stated that accused received burn injuries on his own while extinguishing sofa chair. According to me the fire appeared to be so extensive coupled with the fact that Vibha appears to have burnt in the passage and as well as she had gone to the bath room and her saree was in pieces in the passage itself. If really any attempt was made to extinguish the fire the accused could have received extensive burn injuries. I, therefore, find that the evidence of P.W.. 2 Mrs. Usha and P.W.. 8 Mrs. Pushpa about the last fag end of the incident appears to be true and they could be believed to that extent."

The trial court also believed the evidence of Usha and Pushpa that the respondent had not made any attempt to extinguish the fire or helped Usha in doing so and had not shown any initiative to call a doctor. It also held on the basis of the other evidence on record that instead of sending a doctor for treatment of Vibha he went to Dr. Mukhi's hospital, got himself admitted there even though he had only seven percent injuries, and made a false statement to the doctor that Vibha was already admitted in a hospital. The trial court also believed the two dying declarations.

It, therefore, held that the respondent had killed her by pouring kerosene and setting her on fire. It further held that in view of the cruel treatment given to Vibha and the ghastly manner in which the respondent had committed the murder, proper punishment to be imposed was the sentence of death. It, therefore, convicted the respondent under Section 302 IPC and imposed the sentence of death. It also convicted the respondent under Section 498A IPC and order him to suffer rigorous imprisonment of three years.

The High Court proceeded on the basis that, in order to prove the motive, prosecution had relied upon the following three circumstances; (i) unsuccessful effort of the respondent and his parents to extort as much money as they could from the deceased and her father Chandrakant; (ii) begetting a female instead of a male child by the deceased; and (iii) the treatment given to the deceased and her family by the respondent and his parents as the family members of the deceased belonged to a less sophisticated section of the society. The High Court believed the prosecution evidence regarding demands made by the respondents and his father, payment of Rs. 10,000/- by Vibha's father and withdrawal of Rs. 15,000/- from Vibha's account. It confirmed the finding of the trial court that the respondent was in need of money as he had to pay loan instalments. It also believed the incident of 26.11.83. it, however, held that (i) as the respondent had, on the next day, apologised to Vibha's parents and had given an assurance that he would treat her well and not harass her though he had money problems (ii) no incident of any significance had taken place thereafter, and (iii) even after the incident of 26.11.1983 the respondent and Vibha used to go to Dadar Frequently and were staying there and there was no evidence worth considering with regard to any physical ill treatment to Vibha, the first circumstance could not have provided any motive for the respondent to kill her. The other two circumstances were regarded as too weak. More over, in view of the evidence that Vibha did not like any criticism of the respondent, that she had declined to take a divorce even though her parents desired it and that she always hoped that her situation would improve in future, the High Court held that they on the contrary indicated that the respondent had no reason to cause her death.

The High Court, after re-appreciating the evidence regarding the incident of burning on 23.6.84, recorded a contrary finding that it was a case of suicide and not homicide. Re appreciating the evidence of Tambe (PW-9) and Tiwari (PW-10) , the two hostile witnesses, the High Court held that they were not telling the truth but on the basis of their evidence and the other evidence what can be believed is:

" that both of them had gone to the accused's flat at about 2.15 P.M. on that day. The door of the flat was opened by Vibha. They had entered the flat, had talk with the accused and were sitting in the drawing room when Vibha came to the drawing room in flames."

The High Court also found the evidence of Yadav (PW-11) unreliable except to the following extent:

" The witness had driven Mrs. Shukla, Usha and the baby Rachna in a jeep from Jogeshwari i.e. from Chandrakant's place to Mulund i.e. the accused's house. Secondly, he had gone to the flat along with the baby, and at that time had seen both Tambe and Tiwari coming out of the flat. Thirdly, he had gone downstairs with the baby and when the accused came down, he had carried him upto the dispensary of Dr. Mukhi. He was asked by the accused to go away as soon as the

accused got down from the jeep and he had returned with the jeep to Harsha Apartment. He had carried Dr. Shah, Mrs. Pushpa, and Vibha in the jeep from Harsha apartment to Sion Hospital and on the way had halted the jeep at Dr. Chandan's Hospital".

The High Court further held that the circumstance, namely, that the act of burning had taken place while Tambe (PW-9) and Tiwari (PW-10) were in the flat, alone was sufficient to negative any hypothesis of homicide. The second reason given by the High Court for not accepting the prosecution version of homicide is that the respondent had gone inside the bed room for about 2 to 3 minutes only and, therefore, it was not probable that he could have burnt the deceased within that short time. The third reason given by the High Court for holding that the evidence was more consistent with the hypothesis of suicide is that if respondent had tried to burn Vibha she would have resisted and in that case there would have been some struggle and scuffle, shouts and screaming or at least audible exchange of words but nothing of that sort was heard by the visitors. The fourth reason indicating suicide was that the visitors had left the flat hurriedly after Vibha had appeared before them in flames. If Vibha was burnt by the respondent she would have asked for herself from the two visitors and they would have certainly rendered it. Moreover, Vibha was more agile than the respondent and, therefore, she could have run out of the flat.

Partly relying upon the evidence of Tambe and Tiwari and what was indicated by the scene of offence panchnama the High Court held that in all probability a quarrel leading to a scuffle had taken place between Vibha and respondent before the visitors came to their flat and that while the respondent and the visitors were talking outside she poured kerosene over her body, lit herself and then rushed into the drawing room. It did not attach any importance to the find of kerosene can in the drawing room as the scene of offence panchnama was made at about 11.50 P.M., i.e., after about nine hours and anything could have transpired in the meanwhile.

The High Court found the evidence of Usha (PW-2) and Pushpa (PW-8) inconsistent on two material points viz., who pulled the curtain and tried to extinguish the fire and the conduct of respondent. Usha's evidence was disbelieved as no burn injuries were received by her or pushpa. Moreover, the small burnt portion of the curtain indicated that very little fire was required to be extinguished after they had entered the flat. On the basis of the burn injuries by the respondent the High court inferred that the respondent must have tried to extinguish the fire and that was probably the reason why there was some lapse of time in answering the door bell. It also held that as Usha and Pushpa were called with Rachana and the respondent knew about that it was unreasonable to believe that he would have thought of killing her at that time.

The High Court disbelieved both the dying declarations. One made to Pushpa was disbelieved mainly on the ground that after it was stated to have been made no further enquiries were made by Pushpa from her regarding the reason and the manner in which she was burnt and also because that was not stated to Dr. Shah by Vibha or Pushpa. The dying declaration was disbelieved on the ground that Dr. Shah did not refer to the presence of Vibha's father Chandrakant near the jeep and

that when Dr. Rajan Gupta (PW-16) had asked Vibha about the history of burns she had stated that she had received burns by kerosene and no further details were given by her. It further held that they were concocted with a view to boost up the charge against the respondent.

The high Court believed that the conduct of the respondent was rather unnatural and unusual but it could not be regarded as an incriminating circumstance as the respondent must have been in confused state of mind in view of the circumstances in which he was placed and possibly because he must have thought that he would become the target of attack of his in laws and held responsible for Vibha's death. The High Court also held that the silence of the accused while answering certain questions put to him while he was examined under Section 313 of the Criminal procedure code was not indicating of his guilt as "it cannot be forgotten that prisoners in the dock mostly act on the advice they get from their lawyers" and again "our criminal jurisprudence does not require the accused to open his mouth even when he is completely innocent and no adverse inference can be drawn against him if he chooses not to speak."

With respect to the charge under Section 498-A IPC the High Court held that no proper charge indicating the manner in which Vibha was cruelly treated was framed, as it was extremely Vague and "it had thus undoubtedly prejudiced the accused in the trial in no small measure". On merits it held that the circumstances which were relied upon for proving that charge were not sufficient to lead to that conclusion because:

- 1) The circumstances that rachana was not allowed to stay with Vibha at her in-laws' house at Dadar was not even alleged to be a cause of suicide or any other physical or mental injury and no evidence was led to show that this incident had weighed on her mind and had led her to commit suicide.
- (2) The circumstance that neither the parents nor the respondent liked the female child, in absence of any evidence regarding its effect on the mind of Vibha, could not be regarded as an act of cruelty.
- (3) The incident of 26.11.83 became irrelevant as on the very next day the respondent had tendered an apology and Vibha had gone with the respondent again to her in laws place and no incident of harassment had taken place till 23.6.84 and particularly when Vibha had also gone to Dadar and stayed with parents in law on some occasions during that period.

The High Court found that the inferences drawn and the findings recorded by the trial court were not justified. The High Court, therefore, allowed the appeal and set aside the conviction of the respondent for both the offences which were held proved by the trial court.

Challenging the finding recorded by the High Court that this is a case of suicide and not of homicide the learned counsel of the State forcibly contended that the inferences drawn by the High Court from the proved facts and circumstances, are not at all justified. He submitted that if Vibha wanted to commit suicide she would not have run from the bed room to the drawing room. He also submitted that signs of scuffle preceding burning of Vibha not opening the door of his flat for about ten minutes, find of empty plastic can of kerosene in the drawing room, immediate subsequent conduct of the respondent and a false statement made by him to the doctor, prove beyond any doubt that the respondent had set her ablaze. In the alternative, it was contended by him that even on the basis that Vibha committed

suicide, the High Court ought to have held that it was because of the cruel treatment given by the respondent and, therefore, he was held guilty under Section 498A IPC. He submitted that the High Court having believed that there were demands for money from Vibha and her father, that her father was unwilling to give more money to the respondent, that the respondent was not showing any affection for Rachna, that Rachna was not allowed to stay with Vibha at his place and that on 26.11.1983 in the respondent had driven out Vibha from his house as his father was not willing to pay Rs. 30,000/-, ought to have further held that Vibha committed suicide because she was subjected to harassment and cruelty by the respondent.

On the other hand, it was contended by the learned counsel for the respondent that this being an acquittal appeal what this court has to consider is whether the view taken by the High Court, after considering the entire evidence and the circumstances found proved, has recorded the finding that they do not lead to the only conclusion that the respondent had caused the death of Vibha and that this was not a case of Suicide. Moreover, the High Court has given good reasons in support of its findings. The High Court has recorded the finding that harassment or cruelty was not really the cause for committing suicide. He further submitted that as there was no incident of physical ill treatment or any type of harassment between November, 1983 and June, 1984 and as the evidence disclosed that Vibha and the respondent were to go to her in laws' flat at Dadar because she was not keeping good health, harassment or cruelty being the because of suicide becomes very doubtful. Therefore, it cannot be said that the view taken by the High Court is unreasonable.

In view of the rival submissions and seriousness of the offence we have scrutinised the evidence and examined the judgments of both the courts below with due care and caution. it is very unfortunate that a young girl without any fault of her lost her life. It is also a matter of shame that the respondent did not treat his wife properly because her father was not willing to give more money had for that reason on one occasion he had driven her out of his house and also because she had given birth to a female child. The facts and circumstances which can be accepted as proved no doubt create a strong suspicion that on the fateful day the respondent had, after some quarrel, poured kerosene over her and put her to flames. But this is a case of circumstantial evidence and on re appreciation of the evidence the High Court has found it fit to acquit the respondent. Therefore, unless, we come to the conclusion that the view taken by the High Court is so unreasonable as to warrant interference by this court it will not be proper to interfere with the order of acquittal, only because on re-appreciation of evidence it is possible to take a different view.

On the question of homicide what we find is that the high Court heavily relied upon the fact that prosecution witnesses Tambe and Tiwari were in the flat when the incident of burning of Vibha took place. The prosecution evidence shows that they hurriedly left the flat and did not wait for putting on their shoes before leaving the flat. This conduct of Tambe and Tiwari indicates that something very unusual had taken place in their presence and that had obliged them to leave the flat in such a hurry. If they were told to leave the flat either because the respondent told to leave the flat either because the respondent told them that he had to go out or because there was some exchange of words between Vibha and the respondent, they would not have left

in such a manner. If it is believed that the respondent had left them in the drawing room and gone inside for about two or three minutes had then Vibha was seen rushing into the drawing room in burning condition, as deposed by these two witnesses, then also it becomes very doubtful if the respondent would have tried to burn his wife while outsiders were present in his house. Moreover, the respondent was aware that her mother in law was to come with Rachna at about that time and, therefore, it was unlikely that the respondent would have thought of murdering Vibha at that point of time. All these factors were taken into consideration by the High Court and, therefore, the finding recorded by it cannot be regarded as unreasonable. There is no evidence on record to show when the scuffle, as indicated by what has been recorded in the scene of offence panchnama, had taken place. There is some substance in the contentions raised by the learned counsel for the State that Vibha, if she really wanted to commit suicide, would not have run out of the bed room and that she must not have carried the plastic can of kerosene, as it would have immediately caught fire and would not have been found in the drawing room in the condition in which it was found. These are indeed incriminating circumstances suggesting that the respondent followed with the said tin and poured kerosene over her in the drawing room and placed it there. But the possibility of the said plastic can having been placed there by some one else cannot be ruled out. It is true, as submitted by the learned counsel for the State, that the reason given by the High Court that planting of the plastic can cannot be ruled out because of the time lag between the time when the incident took place and the scene of offence panchnama was made, is not quite correct. The mother of Vibha along with Vibha and other persons had left the flat within a short time for taking her to a hospital and at that time they had closed the door and the flat could be and was in fact opened only after the police obtained the key of the flat from the respondent. Therefore, it was not correct to say that during these six to eight hours anybody could have planted the said plastic can in the drawing room. But even during that short period besides Vibha's mother Pushpa, her sister Usha, other persons had gathered in the flat and anyone of them could have placed the said plastic can at the place where it was found. If respondent had carried the said can to the drawing room and poured more kerosene over Vibha more damage would have been caused to the articles lying in the drawing room. The evidence discloses, and that is what the High Court has found, that the damage caused to the articles lying in the drawing room was very less.

We also find considerable force in the submission made by the learned counsel for the state that the conduct of the respondent soon after the incident was highly unusual, that he made a false statement to the doctor to whose hospital he had gone for treatment and that he has not given any explanation in his 313 statement as regards some of the highly incriminating circumstances and they are all indicative of the fact that he had caused the death of Vibha. It was submitted by the learned counsel that if this was a case of suicide by Vibha then the respondent would have tried to put out the fire and in that case he would have received more burn injuries than what were found on his person. The curtain with which he had tried to put out the fire had only a small burnt portion and that indicates that he had tried to extinguish the fire only at the last moment. and that too to make a show that he was not guilty, particularly when he found that mother of Vibha had already

arrived. It was also submitted that if it was really a case of suicide he would have at once tried to secure medical help for Vibha. Instead of doing that he got himself admitted in a hospital. This unusual conduct of the respondent and his failure to explain some of the incrimination circumstances create a strong suspicion about his involvement but it does not lead to the only conclusion that Vibha had not committed suicide but he had caused her death. He was the only person staying in the flat with Vibha and, therefore, he might have felt that he would be falsely involved by his in laws. If in this state of mind he did not do what he was expected to do that cannot lead to the conclusion that he behaved in that manner because he had committed the murder of Vibha. The High Court has considered all these factors and given good reasons for holding that this was not a case of homicide., We also find that the reasons given by the High Court for not relying upon the two dying declarations are not improper. Therefore, the finding recorded by the High Court, that the prosecution has failed to establish beyond reasonable doubt that the respondent caused her death, does not call for any interference.

Even with respect to the evidence of harassment and cruelty, the High Court has held that it is insufficient for holding that Vibha was driven to commit suicide because of harassment and cruel treatment by the respondent. The fact that after the incident of 26.11.1983 the respondent had approached Vibha and her parents on the very next day and apologised and no other incident either of demand of money or ill treatment had taken place after that date makes it doubtful if harassment and cruel treatment given by the respondent was the immediate cause of committing suicide. Before a person can be convicted under Section 498A IPC the prosecution has to prove that he committed acts of harassment or cruelty as contemplated by that Section and that harassment or cruelty was the reason for the suicide. What we find in this case is that no specific charge was framed against the respondent. As rightly pointed out by the High Court no evidence was led to show that either her separation from Rachna or the incident of 26.11.1983 had weighed heavily on her mind and that had driven her to commit suicide. Neither the parents nor the sister of Vibha have deposed about any complaint made by her regarding any ill treatment by the respondent after the incident of 26.11.1983. Moreover, the evidence of these witnesses show that Vibha was to go to her in laws place at Dadar and stay with them as she was not keeping good health. If she was under mental strain because of any ill treatment or harassment by the respondent or her in laws she would have preferred to go and stay with her parents. These are the factors which were taken into consideration by the High Court for arriving at the conclusion that the prosecution has failed to establish beyond reasonable doubt that Vibha committed suicide because of ill treatment or cruelty by the respondent. The view taken cannot be regarded as unreasonable.

In the result the appeal is dismissed and the bail bonds of the respondent are ordered to be cancelled.