Ganeshlal vs State Of Maharashtra on 10 April, 1992

Equivalent citations: 1992 SCR (2) 502, 1992 SCC (3) 106, 1992 AIR SCW 1175, 1992 (3) SCC 106, (1992) 2 SCR 502 (SC), 1992 ALLAPPCAS (CRI) 275, (1992) 2 JT 592 (SC), 1992 CRIAPPR(SC) 279, 1992 (2) CRIMES 161, 1992 CRILR(SC MAH GUJ) 433, 1993 (1) DMC 326, 1992 (2) SCR 502, 1992 (2) JT 592, 1993 SCC(CRI) 435, (1992) SC CR R 480, (1992) 1 HINDULR 596, (1993) MAD LJ(CRI) 102, (1993) MATLR 236, (1992) 2 CURCRIR 48, (1992) 1 CRICJ 602, (1992) 2 CRILC 521, (1992) 29 ALLCRIC 394, (1992) 2 ALLCRILR 110, (1992) 3 BOM CR 671

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.M. Kasliwal

PETITIONER:
GANESHLAL

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT10/04/1992

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1992 SCR (2) 502 1992 SCC (3) 106
JT 1992 (2) 592 1992 SCALE (1)811

ACT:
Indian Penal Code, 1860:
Sections 34, 201, 203 and 302-Delhi of wife due to severe burns-Husband pleading innocence-Claiming it to be suicide-Circumstantial evidence complete and consistent that husband and his family members committed the offence-Conduct of accused-Unnatural, indifferent and hard-hearted-All accused acquitted by trial court-High Court reversing and convicting the husband alone-Conviction and sentence-Validity of.
Criminal Procedure Code, 1973:

Section 313-Death caused while in custody of accused-Plausible explanation for cause of death-Need to be given in the statement.

Section 161:

Criminal trial-Delay in recording statement of witness-Whether and in what circumstances renders the evidence doubtful-Need for scanning the evidence carefully.

HEADNOTE:

At the residence of the appellant, his wife was found dead with severe burns. The appellant, his parents, sister, maternal uncle and the uncle's daughter were charged with the offence of murder and tried under section 302 read with section 34 and sections 201 and 203 read with section 34 IPC, though initially the case was registered under section 306 read with section 34 IPC.

The Trial Court acquitted all the accused. On appeal the High Court convicted the appellant alone under sections 302 and 201 IPC and sentenced him to undergo rigorous imprisonment for life and three years imprisonment respectively, against which the appellant has preferred the present appeal.

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On behalf of the appellant, it was contended that it was a case of suicide as no kerosene was found in the house except in the room where the death occurred; that the door to the room from stairs was not closed from outside and in case of murder, the deceased could have run away from the room opening the latch; that the deceased was determined to commit suicide for humiliation caused to her on account of her not being allowed to go to the house of her sister; and that there were no signs of external injuries. It was also contended that since the prosecution all through proceeded on the assumption that the appellant abetted suicide, suddenly it could not be said to be a case of murder.

It was also contended that since all the other accused have been acquitted, the appellant could not be convicted under section 302 IPC.

Dismissing the appeal, this Court,

HELD : 1. There is no evidence or even suggestion that the deceased had any tendency to commit suicide or affected with any psychosis for committing suicide. It is also clear from the evidence that the door was not bolted from inside. Unless the doors from outside were closed and made the victim alone remain in the room, the smoke would not have confined to the room. There is no evidence of any struggle by her as there was no injuries to her back or feet or rubbing the ground. Kerosene tin was found and there were no signs of kerosene sprinkled in the room. The instinct of self preservation at the height of agony must lead in an attempt to put out the flames at least with hands. While

the deceased was drying the clothes, her palms were wet, somebody must have come from behind, caught hold of her palms and another her legs, and she was made unconscious. The means used to make her unconscious is not available either from medical evidence or circumstances. She was made to lie down in a supine position on the ground. Thereafter, kerosene appears to have been poured from the tin brought by someone and set her on fire. It is indisputable that kerosene smell was found in the room and she died due to burns. The walls and ceiling became blackish which would clearly show that a large quantity of kerosene was poured on her after she became unconscious due to which her clothes were soaked of kerosene. The witnesses have also seen from outside for about 10 to 20 minutes that smoke was coming form the room. These circumstances clearly establish that the death was not due to suicide, but one of homicidal. [508G, H; 509A-E]

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2. The normal ordinary human conduct would be that when one of their inmates was in flames, they would have made every endeavour to save her life, if it were a case of suicide, and call the people to come to their rescue to save her life or at least would have sought first aid from PW-6, a compounder, who is next door neighbour, to save the life of the deceased. No such attempt was made; nor even attempted. On the other hand the appellant's earliest attempt was to misguide the people that the deceased died due to short circuit, which claim was falsified from the evidence of PW-10, Electrical Engineer. [513G, H;514A]

3.1. The evidence on record is not sufficient to arrive at an immediate motive to commit the crime and the case depends on circumstantial evidence. But in circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. [510D-F]

3.2. The evidence of witness recorded at late stage must be received with a pinch of salt. Delay defeats justice. But each case has to be considered on its own facts. In the instant case, the High Court is well justified in placing reliance on the evidence of PW-6. In fact material part of his evidence was not subjected to cross examination, except suggesting that he was deposing falsely. Under these circumstances he is a truthful and reliable witness. His evidence clearly show that neither the appellant, nor any member of the family though were present in the house, attempted to save the deceased but were simply sitting in the first floor unmoved by even the ghastly murder and the appellant was guarding at the grill

gate preventing the people from entering into the house falsely stating that there was short circuit. This evidence receives corroboration from the evidence of PW-7 and PW-8. [512C-E]

3.3 In his examination under section 313 Cr. P.C., the appellant admitted that A-6 went to the police station and gave FIR stating that the deceased caught fire while she was handling the wet clothes for drying, due to short circuit, and that this information was conveyed by the appellant himself. This admission is not only a relevant fact under section 8 of

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Evidence Act as res gestae but a most important circumstance against the appellant. The indifferent and hard hearted conduct are also important circumstances. It is settled law that the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. Absence of any attempt to save the life of the deceased while she was burning and was charred to death, the conduct of the accused in not attempting to give any medical aid, the conduct of the appellant immediately after the death and falsely proclaiming that there was short circuit implying to scare away the people from attempting to save the deceased - these are most telling and relevant crucial fact apart from repulsive inhuman conduct. The false plea of suicide is yet another relevant fact. When the death had occurred in the custody of the accused the appellant is under an obligation in section 313 Cr. P.C. statement at least to give a plausible explanation for the cause for her death. No such attempt was even made except denying the prosecution case. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that the appellant is a prime accused in the commission of gruesome murder of his wife. The circumstantial evidence is complete and consistent with the only conclusion that the inmates alone committed the crime and the appellant was one among them. The absence of an appeal against acquittal of A-1 and A-3 to A-6, all of them or who among them shared common intention with the appellant is obviated. The appellant is the principal perpetrator of the crime or one among the accused who shared common intention to murder the deceased. The conviction of the appellant is therefore altered to one under section 302 read with section 34 IPC. Accordingly, appellant is convicted for the murder of his wife and is sentenced to undergo rigorous imprisonment for life. The conviction under section 201 IPC is set aside. [514C-H; 515A, B]

Atley v. state of U.P., AIR 1955 SC 807; Balakrushna Swain v. State of Orissa, AIR 1971 SC 804, relied on.

4. The Sessions Court framed the charges under section 302 read with section 34 IPC. Thus, the fact of registering the case initially by the local police under section 306 IPC loses all significance. It cannot be disputed that the

Sessions Courts was fully competent to frame charges under section 302 read with section 34 IPC. At the trial, if the evidence adduced by the prosecution is sufficient to bring home the offence under section 302 IPC, the conviction thereon does not become illegal. [510B, C]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 732 of 1991.

From the Judgment and Order dated 30.10.91 of the Bombay High Court of Judicature in Criminal Appeal No. 215 of 1987.

U.R. Lalit, R.K. Jain, Makrand D Adkar, Jamshed Bey and Mrs. V.D. Khanna Advocates for the Appellants.

V.V. Vaze and S.M. Jadhav for the Respondents. The Judgment of the Court was delivered by K. RAMASWAMY, J. This appeal is under s.2 of Supreme Court Enlargement of Criminal Jurisdiction Act, 1970. The appellant along with his parents, sister, maternal uncle and uncle's daughter were charged for the offence under s.302 read with s.34 and ss.201 & 203 read with s.34 I.P.C. of the murder of his wife Kanchana. In S.T. No. 125/84, the Addl. Sessions Judge, Akola by judgment dated February 10, 1987 acquitted all of them. On appeal, the appellant alone was convicted under s.302 and s.201 IPC and sentenced to undergo rigorous imprisonment for life and three years respectively by judgment dated October 30, 1991 of the High Court of Bombay, Nagpur Bench, Nagpur.

The material facts that lie in short compass are thus :

Kanchana was married to the appellant in the year 1975. In course of time the appellant's father became rich, while her parents' family remained poor leading to constant humilation. The sister of Kanchana, Vanmala, PW-5, was also married in the same village, Mangrulpir. On September, 3, 1983, PW-5 went to the deceased family at about 10.00 to 10.15 a.m. and invited in her house for which mother-in-law of the deceased and Kanchana to attend "Teej" function in her house for which the mother-in-law refused to accept the invitation and also did not permit Kanchana to attend the function which resulted in exchange of words etc. When she was coming out, she heard abuses against the deceased and somebody being beaten. After extending invitations to two or three people when she came back home and was entering into her house, PW-9, her maid servant, came running and told her that Kanchana was dead. Thereafter she gave information to her father, PW-4, and others at Amravati. A-

6, maternal uncle of the appellant, went to the Police Station and lodged First Information Report, Ex-73, that while Kanchana was drying wet clothers on the top floor, there was short circuit in the house resulting in her death. Mohanlal PW-4, on receipt of the news reached the appellant's house at Mangrulpir at about 4.00 p.m. On seeing the condition of the dead body he too laid complaint of murder. In the meanwhile the police registered the crime. The police reached the spot at about 12.50 p.m. A.S.I. Jadhao, PW.14 along with Head Constable Sharma, PW-11, conducted investigation. He drew the Panchanama, Ex-66, the scene of offence, attested by PW-7 and another. He recovered the burnt articles, ornaments etc. and sent the body for autopsy. It was further investigated by S.I., PW-15. Subsequently, it was entrusted to the C.I.D. and PW-16, Kshir Sagar conducted the investigation and laid the chargesheet. It may be relevant to state at this stage that initially the crime was registered under s. 306 read with s.34 I.P.C. Later it was converted and the charges were framed by the Sessions Court under s.302 read with s.34 I.P.C.

The prosecution placed reliance on the evidence of PW-4 and PW-5 to prove motive for the crimes . PW-6, the Compounder and PW-8, Tea Stall owner, PW-9, maid servant of PW-5 to prove the conduct of the accused together with the medical evidence and also chemical examiner's report. It also relied on the report Ex. 73 lodged by A-6. The case rests on circumstantial evidence. The circumstances relied on by the prosecution are as follows :

> The motive, namely the affluent circumstance of the accused party, the relative poor financial position leading to ill treatment of Kanchana. The treatment meted out to Kanchana in the presence of Vanmala, followed by beating. PW-9, maid servant informing of the death. PW-6 spoke of the appellant's conduct, corroborated by PW-8, of standing at the grill gate, which is the only entry into the house an preventing the people to go into the house stating that there was short circuit and to save them; indifferent attitude of the in-laws and other inmates and keeping mum, their leaving the deceased alone in the third floor in flames; emitting of kerosene smell; and their non- disclosure on inquiry for the cause of the death. PW-10, the Engineer, Electricity Department spoke that there was no short circuit; the conduct of the appellant and also the first information report given by A-6, the medical evidence that the death was due to shock and suffocation. The chemical analyst report and evidence of scene of offence by PW-7.
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> Strenuous attempt was made in the grounds of appeal and also vehemently contended by Shri U.R. Lalit, the learned Senior counsel for the appellant, that one of the Judges (Justice A.A.Desai) who decided the appeal, argued against the appellant as an Asstt. Govt. Pleader and despite having been brought to his notice, the learned Judge disposed of th appeal suggesting, thereby, that the appellant was not meted out fair treatment. We find no force in th contention. It is true that the record now placed before us would show that way back in 1984 as Asstt. Govt. Pleader, Shri Desai appeared against the appellant in a bail application and other proceedings. Might be that the learned Judge had forgotten about his appearing against the appellant. It might also be possible that it was not brought to his notice when the Bench heard the appeal. Finding that the matter went against the appellant, he turned round and

desperately raised the contention. However, to remove the feeling of injustice due to above factor and to satisfy ourselves of the merits, we have heard the appeal as if it is a first appeal against the judgment of the Sessions court. The appellant engaged Shri U.R. Lalit and Shri R.K. Jain, Senior Advocates, apart from a band of Junior Advocates assisting them. We ourselves minutely considered the entire evidence afresh and reached our own independent conclusions.

The crucial question in this case is whether Kanchana died due to suicide or homicide. The situs is the third floor of the house of the appellant. The occurrence took place at 10.30 a.m.. No outsider had access into the house that too except through the grill gate in the ground floor. In the first floor, parents and sister of the appellant live. The second floor was in the occupation of he appellant and the deceased and the third floor consists of one room and open varandah. The occurrence has taken place in the room on the third floor. Thus it would be apparent that it is a custodial death. The Doctor specifically stated that she died due to suffocation and shock by inhaling Carbonmonoxide. It would thus be clear that the door was closed at the time when this occurrence had taken place. There is no evidence or even suggestion that the deceased had any tendency to commit suicide or affected with any psychosis for committing suicide. It is also from the evidence that the door was not bolted from inside. Unless the doors from outside were closed and made the victim alone remain in the room, it would be difficult to the smoke confining to the room. From evidence it is clear that the deceased went to the top floor to dry up wet clothes. The deceased was of a weak constitution. Her arms and feet were not burnt. She was found lying on back in a supine position. Her back and clothes on back were not burnt. There is evidence on record that there was a bucket with water and wet clothes in the room. There is no evidence of any struggle by her as there are no injuries to her back or feet or rubbing the ground. Kerosene tin was found and there are no signs of kerosene sprinkled in the room. The instinct of self preservation at the height of agony must lead in an attempt to put out the flames at least with hands. Thus it would appear that, while the deceased was drying the clothes, her palms were wet, somebody must have come from behind, caught hold of her palms and another her legs, and she was made unconscious. The means used to make her unconscious is not available either from medical evidence or circumstances. She was made to lie down in a supine position on the ground. Thereafter, kerosene appears to have been poured from the tin brought by someone and set her on fire. It is indisputable that kerosene smell was found in the house. The walls and ceiling became blackish which would clearly show that a large quantity of kerosene was poured on her after she became unconscious due to which her clothes were soaked of kerosene. After fire was lit there was heavy smoke screen. That will be visible when we find that the roof and walls became blackish. The witnesses have also seen from outside for about 10 to 20 minutes that smoke was coming from the room. These circumstances clearly establish that the death was not due to suicide, but one of homicide. The contention that no kerosene was found in any other parts; the doors to the room from stairs was not closed from out side in case of murder she should have run away from the room

opening the latch; she was determined to commit suicide for humiliation caused to her and PW.5 Vanmala her sister in not allowing her to go to PW.5's house and that there were no signs of external injuries and, therefore, the death was due to suicide is fallacious and the High Court has rightly negatived the same.

The next contention that the prosecution all through proceeded with the assumption that the accused abeted suicide, punishable under s. 306 IPC and that, therefore, it is not a case of murder has no substance.

That apart, it appears that the investigation made by the local police initially did not proceed on the correct lines and no sincere effort appears to have been made to collect the evidence of the material facts. The investigation was later on entrusted to the C.I.D. on 10.11.1983 in pur-

suance of an order dated 3.11.1983 passed by superior officers. PW. 16 Sri Kshirsagar, Inspector C.I.D. conducted the investigation and recorded the statements of some more witnesses. Ultimately he handed over the charge of investigation to Mr. Deshpande (PW.18), Dy. S.P.-C.I.D., Crimes on 16.12.1983. Mr. Deshpande also recorded the statements of some more witnesses and collected the other material evidence and after verifying and careful consideration of all the evidence, he added the charge under s.302 I.P.C. Thereafter charge was submitted in the Court of Judicial Magistrate, First Class, Mangrulpir on 18.9.1984 who committed the case to the court of Session Judge, Akola for trial. The Sessions Judge, Akola for trial. The Sessions Court framed the charges under s.302 read with s.34 I.P.C. Thus, the fact of registering the case initially by the local police under s. 306 I.P.C. loses all significance. It cannot be disputed that the Sessions Court was fully competent to frame charges under s. 302 read with s. 34 I.P.C. at the trial, if the evidence adduced by the prosecution is sufficient to bring home the offence under s.302 I.P.C., the conviction thereon does not become illegal.

It is next contended that the parents, sister, maternal uncle and uncle's daughter, A-1, A-3 to A-6 having been acquitted the appellant cannot be convicted under s.302 I.P.C. The question therefore, is whether it is the appellant alone who has committed the offence or parents, sister and two others also are participis criminis. It is true as contended for the appellant that the evidence on record is not sufficient to arrive at an immediate motive to commit the crime and the case depends on circumstantial evidence. But in circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non- existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never as indispensable factor for conviction. In Atley v. State of U.P., AIR 1955 SC 807 at 810 this court held that where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown. Therefore, even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from

the proved circumstances. Therefore, the evidence of PW-4 and PW-5 partly with regard to the motive may not be sufficient to bring home the strong immediate motive. But the evidence of PW-5, Vanmala, that on the fateful day, she went to her sister's house situated at a distance of 40 to 50 ft. from her house and that she extended invitation to Kanchana and Kanchana's mother-in-law to attend the "Teej" ceremony in her house was not disputed in the cross examination. It was around 10.00 to 10.15 a.m. It is not necessary to dilate the conversation for refusal to attend the ceremony but suffice to state that the appellant was present at that time. When Vanmala came down from the first floor, she heard exchange of words and somebody being beaten. After extending invitation to some people when she returned home, her maid servant, PW-9, after some time came and told her that her sister died. From her evidence in this behalf, there is no contradiction, but there is an omission of hearing exchange of words and some body being beaten, in her statement recorded under s.161 Cr. P.C. Giving allowance to omit this part of the evidence i.e. exchange of words and hearing the beating of somebody, the fact remains that at 10.30 a.m. Kanchana died. It is established from evidence of Vanmala, PW.5 that she saw her sister Kanchana alive at about 10 to 10.15 a.m. in the company of her husband, in-laws, sister-in-law in the house and within few minutes thereafter she was reported dead while in the house solely occupied by the accused appellant and his family members.

Thereafter we have the evidence of PW-6, Moti Ram, who admittedly is a Compounder in Dr. Chitlange Nursing Home, which is situated adjacent to the house of the appellant. Therefore, he is a natural witness. It is his evidence that at about 10.30 a.m. he heard the voice of the appellant stating "kakaji close down" "kakaji close down". The appellant was at the grill holding it. It is already stated that the grill is the gateway into the house and to the stair case. He went to the appellant's house; the appellant prevented entry into the house; PW-6 pushed him aside and went inside the house. The appellant's parents, sister and A-5 were in the first floor. When he enquired, they did not disclose anything when asked for, specifically the mother of the appellant also did not speak anything. Only his father said that Kanchana was burning. When PW.6 went to the third floor, he saw Kanchana burning, having no clothes on her person and she was in flames and her thighs were burning. He smelt kerosene and thereafter he went away. It is true that there was a delay of nearly 21/2 months in recording his statement but it goes explained as the investigation did not proceed in the desired lines initially and only after PW.16 took over the investigation, he recorded the statement of PW.6. The dispensary used to open by 10.00 a.m. and his presence is natural. He has no axe to grind against the appellant or any of the members of his family. He is also an independent witness. It is true that he was a Compounder working with Doctor Chitlange, brother-in-law of PW-5. There nothing on record nor even suggested that the family members of PW.5 were inimically disposed towards the accused. It was suggested to PW.5 which was admitted that appellant's mother visited PW.5 when she sustained an injury which would show that both families were on cordial terms. So PW.6 being a natural witness his evidence cannot be doubted due to delay. It is true that this court in Balakrushna Swain v. State of Orissa, AIR 1971 SC 804 held that the evidence of witness recorded at late stage must be received with a pinch of salt. Delay defeats justice. But each case has to be considered on its own facts. In view of the above facts we have scanned his evidence carefully. We are satisfied that he is a truthful witness. The High Court is well justified in placing reliance on his evidence. In fact material part of his evidence was not subjected to cross examination, except suggesting that he was deposing falsely. Under these circumstances he is a truthful and reliable

witness. His evidence clearly shows that neither the appellant, nor any member of the family though were present in the house, attempted to save Kanchana but were simply sitting in the first floor unmoved by even the ghastly murder and the appellant was guarding at the grill gate preventing the people from entering into the house falsely stating that there was short circuit. This evidence receives corroboration from the evidence of PW-7 and PW-8. PW-7, Brij Lal, Panch witness stated that the grill door was closed and door was guarded black, the walls became blakish and the burnt clothes were smelling with kerosene. One basket with wet clothes was lying in the room. He also saw kerosene tin. PW-8, Liakat Ali, in another independent witness. He owns a tea hotel opposite just about 30 to 40 ft. from the house of the appellant. His statement was recorded on the next day. In his evidence he stated that in the beginning he saw smoke coming from the 3rd floor and later he saw a crowd collected in front of the appellant's house. He also went there. He saw the appellant shouting that there was an electric short circuit in the building and was requesting the people to save them. He was standing at the grill gate and when the witness tried to enter in the house, the appellant prevented him. He pushed the appellant aside and went inside the house. In the first floor, he saw the appellant's mother, sister and father sitting. On enquiry they did not speak anything but directed to go upstairs. When he went, he saw the body of the deceased in the room burning. The only omission in his statement under s.161 Cr. P.C. was regarding his asking the mother and sister of the appellant and their directions to go to the upstairs. He admitted that his shop belongs to PW.5's family. Admittedly he too had no enimity with the appellant or his family, nor even suggested. As stated earlier, the family of PW-5 had also no enimity. Under these circumstances PW-8 being also an independent witness, his evidence inspires confidence to believe him as a truthful witness. The High Court was right in believing his evidence. From the evidence of PW-6 and PW-8 it is clear that the appellant was falsely exclaiming that there was a short circuit and requesting the people to save them. At the same time he was preventing the people from getting into the house. They saw the appellant and other accused in the house without attempting to save the life of Kanchana. It may be relevant to state that the earliest version of A.6 in Ex. 73 report given to the police was that the deceased was drying the clothes at that time. Due to short circuit she received shock and died. This theory is now found to be false from the evidence of P.W.10, the Electrical Engineer. It is also now not set up as defence even before us. Evidence of PW.7, the panch witness, and Asstt. Sub-Inspector, PW-14, and PW-6 and PW-8 clearly establishes that in the room on the third floor, the deceased was seen burning and that the door was open from outside. The contention that the deceased had access to open another door from inside into the staircase from the room and that it is not a case of homocide, is false in view of the facts narrated hereinbefore.

From this evidence it is clear that the accused appellant and his family members were present in the house at the time when the deceased was buring due to fire lit after pouring kerosene on her and they made no attempt to save her. The contention that the Doctor had stated that the death was instantaneous and nothing was left for the appellant and the other family members to save her, is unacceptable. The normal ordinary human conduct would be that when one of their inmates, namely Kanchana was in flames, they would have made every endeavour to save her life, if it were a case of suicide, and call the people to come to their rescue to save her life or at least would have sought first aid from PW-6, who is next door neighbour, to save the life of the deceased. No such attempt was made nor even attempted. On the other hand the appellant's earliest attempt was to misguide that Kanchana died due to short circuit. This attempt was burried fathom deep from the

evidence of PW.10, Elect. Engr. Then they set up the plea of suicide. We have Ex. 73, the first information report, immediately lodged by A-6 with the police. We need not go into the question as to what extend the admission by a co- accused would be used against the appellant. Suffice it to state that in his examination under s.313 Cr. P.C., the appellant admitted that A-6 stated that the deceased caught fire while she was handling the wet clothes for drying, due to short circuit. In Ex-73, it was also stated that this information was conveyed by the appellant himself. This admission is not only a relevant fact under s.8 of Evidence Act as res gestae but a most important circumstance against the appellant. The indifferent and hard hearted conduct are also important circumstances. It was also admitted that the walls in the room became blackish due to smoke. It is settled law that the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. Absence of any attempt to save the life of the deceased Kanchana while she was burning and was charred to death, their conduct in not attempting to give any medical aid, the conduct of the appellant immediately after the deceased was soaked with kerosene and litting fire after closing the door A.6 obviously opened it after ensuring that she had died, the appellant's coming down and standing at the grill gate on ground floor; the appellant shouted that uncle A.6 should close down falsely proclaimed that there was short circuit; implying to scare away the people from attempting to save Kanchana. These are most telling and relevant crucial facts apart from repulsive inhuman conduct. The false plea of suicide is yet another relevant fact. When the death had occurred in their custody the appellant is under an obligation in s.313 Cr. P.C. statement at least to give a plausible explanation denying the prosecution case. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that the appellant is a prime accused in the commission of gruesome murder of his wife. The circumstantial evidence thus discussed is complete and consistent with the only conclusion that the inmates alone committed the crime and the appellant was one among them.

The evidence of record does establish that more than one would be participants to murder Kanchana. The absence of an appeal against acquit-

tal of A-1 and A-3 to A-6, namely, Hiralal, Ayodhyabai, Premlata, Aruna and Rameshwar, all of them or who among them shared common intention with the appellant is obviated. The appellant is the principal perpetrator of the crime or one among the accused that shared common intention to murder Kanchana. The conviction of the appellant is accordingly altered to one under s.302 read with s.34 I.P.C. The appellant is convicted for the murder of his wife, Kanchana under s.302 read with s.34 I.P.C. and is sentenced to undergo rigorous imprisonment for life. The conviction under s.201 is set aside. The judgment and order of the High Court is confirmed with the above modification. The appeal is accordingly dismissed.

G.N. Appeal dismissed.