

### **Murder of wife**

**Introduction** - In the preamble of the Constitution, the people of India are referred to as "we, the people of India," but people at different levels of socio-economic conditions have their own nation, where they communicate and have cultural exchange with similarly situated people. The India of villages is different from the India of urbanites. The most distorted face of our society is in urban slums. Maybe because of poor financial conditions, poor living conditions, no sanitation, and the absence of civic amenities, they always remain frustrated. Most of them have low intelligence and emotional quotients. They can't express their frustration at the workplace because that will cost them their livelihood. The expression of frustration is when their family comes together or friends come together. Their frustration and emotional dissatisfaction often lead to incidents that expose them to dire consequences. In the present case, the husband and wife living in a slum *were in the habit of* picking up quarrels with each other every day, and one day when the wife was denied shelter by her parents to get rid of the company of the husband, and when, in her desperation to separate herself from the company of the husband, she tried to search for shelter at another place, the ego of the husband was hurt, and he put his wife to death and exposed himself to punishment for murder.

*Registered on: 04/02/2006.*

*Decided on: 10/05/2006.*

*Duration: 0Y. 3M. 7D.*

### **IN THE COURT OF SESSIONS, N A S H I K.**

**[ Presided over by: A.H. Nathani]**

**II Ad-hoc Additional Sessions Judge,**

### **SESSIONS CASE NO..**

The State of Maharashtra,

Through:

District-Nashik. **Complainant.**

**- : VERSUS : -**

Manoj,

Age 22 years,

District: N a s h i k. ... **Accused**

Mr., APP for the State.

Mr. Adv. For accused.

### **-: J U D G M E N T : -**

**[Delivered on this 10<sup>th</sup> day of May, 2006]**

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1. The accused stands to trial of the offence punishable under Section 302 of Indian Penal Code.

2. The prosecution case is as under: -

Deceased Maya was daughter of informant Smt. Leelabai. She was married to accused Manoj in the year 2002. Informant and the accused belong to poor strata of the society. Informant and the accused were residing in separate huts in a slum situated opposite Pumping Station in locality of Nashik. Accused was having a cart. Accused and Maya used to transport cow dung in the said cart and earn their livelihood. The matrimonial relations of accused and Maya were not cordial. Accused used to suspect fidelity of his wife. They often used to quarrel.

3. On 8/12/2005 accused and Maya came back to their house in the evening. After Maya cooked food, quarrel erupted between accused and Maya. Informant Leelabai and her husband said them not to quarrel. Because of the quarrel Maya came to her parents' house and wanted to take shelter at the house of her parents. The accused also came there and insisted that she should come back to his house with him. Parents of Maya said both of them to go to their house. After that, Maya started to proceed towards the road saying that she will stay with some other relative. Accused followed her.

4. While accused and Maya were on the road, accused kicked Maya. When she fell down on the road, accused picked up a concrete block lying beside the road and dropped it on the head of Maya. Maya sustained bleeding injury. The incident was witnessed by Mangala younger sister of Maya and Balu an employee working at the pumping station. The matter was reported to police. Policemen came there in the vehicle and carried Maya to hospital where Maya was declared dead by the medical officer of the Civil Hospital, Nashik. Informant Leelabai lodged report of the incident with Police Station.

5. PSI Mr. Kazie investigated the offence. He visited the place of incident. He inspected the place of incident in presence of panchas. He recorded spot panchanama. He seized the samples of blood, soiled soil and ordinary soil, blood-stained stone and blood stained Odhani found at the place of incident. He recorded spot panchanama. He recorded statements of the witnesses. The corpse of Maya was postmortem at Civil Hospital, Nashik.

6. PSI Mr. Kazi sent police party to arrest accused. Accused was traced out. PSI Mr. Kazi arrested the accused on 9/12/2005 at about 1.25 p.m., He seized blood-stained clothes on the person of the accused in presence of panchas. He forwarded seized articles from the place of incident, clothes of the accused and sample of blood of the deceased for analysis. After investigation, PSI Mr. Kazi filed charge sheet in the Court of Judicial Magistrate, First Class, Nashik.

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7. As the offence being triable by the Court of Sessions, Judicial Magistrate First Class committed the case to the Court of Sessions and Hon'ble Sessions Judge made over the same for trial to this Court.

8. Charge for the offence punishable under Sections 302 of Indian Penal Code was explained to the accused. The accused pleaded not guilty.

9. Defense of the accused as emerged from the mode of cross examination of the prosecution witnesses and statement of the accused under Section 313 of Code of Criminal Procedure is twofold. Firstly, he denied the occurrence of the incident. Secondly, he is taking defence that when the accused was trying to force Maya to come back his home by pulling her hand, Maya applied force and fell down on the tar road. She, therefore, sustained injury on her head accidentally.

10. Following points arise for my determination.

1. Does the prosecution prove that death of Mrs. Maya is a homicide?	Point No.1: In the affirmative.
2. Does it further proves that the accused on 8/12/2005 at about 10-00 p.m., at Nashik did commit murder of Mrs. Maya by intentionally causing her injuries, which he knew to be likely to cause death of Maya to whom the injuries were inflicted?	Point No.2: In the affirmative.
3. What Order?	Point No.3: As per final order.

11. I record my findings on the above points as under, for the reasons mentioned herein below.

**:- REASONS :-**

12. The prosecution rely on the evidence of eye witnesses namely PW-4 Mangala and PW-6 Balu. Out of them, PW-4 Mangala is a child witness. PW-1 Mulchand and PW-3 Leelabai deposed about the circumstances connected to the occurrence of the incident. PW-2 Suresh is the witness in whose presence accused was arrested with blood-stained clothes and his clothes were seized by the investigating officer. PW-5 medical officer Dr. Lunavat deposed about the medico legal evidence. Forensic evidence is adduced by producing C.A. Reports Exh.17 and 18 about analysis of blood of the deceased, articles found at the place of incident and clothes of the accused. PW-7 PSI Mr. Kazi deposed about collection of the evidence during the investigation.

**As to Point Nos.1: -**

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13. Contents of the inquest panchanama recorded at Civil Hospital, Nashik in presence of PW-1 Mulchand reveal that the deceased sustained a 2-inch-long injury on head on left side. Medico legal evidence reveal that contused lacerated wound found on the left temporooccipital region having size of 5 cm X 2 cm. The injury was bone deep. There was a scalp hematoma having size of 9 cm X 4 cm over right temporoparietal region. On opening the body, medical officer found 7 cm long fracture on the left temporal bone. The medical officer found the evidence of paleness of the organs which was due to hemorrhage. Dr. Lunavat opined that the lady died because of hemorrhagic shock due to head injury. Considering the medico legal evidence and the other evidence discussed above, it is established that Maya died because of drain of blood from her body. This finding rules out the possibility of suicidal or natural death.

14. It is the case of the defence that Maya sustained injury accidentally when she tried to free herself while the accused was trying to pull her to take her to his home, Maya applied force to free herself and she fell down on the concrete block and sustained injury. In order to substantiate this defence, learned defence counsel relied on the commentary of Modi on Medical Jurisprudence and Toxicology where it is mentioned that the temporal bone and orbital plate of frontal bone are easily fractured. It is further mentioned that the skull may be fractured by a force as little as fall from a stool. Dr. Lunavat accepted these propositions in the commentary of Modi on Medical Jurisprudence.

+Dr.Lunavat expressed opinion that the injury on the person of Maya may have occurred because of fall on the stone or on the stony surface while trying to free herself from the clutches of another person. Dr. Lunavat also agreed with the learned prosecutor, by deposing that injury on the person of Maya is possible by dropping cement block like article no.1 shown to him in the Court on her head. So, as per the opinion expressed by Dr. Lunavat, injury on the person of Maya may be accidental or homicidal.

15. Learned defence counsel did not put his defence of accidental death of Maya to eye witness PW-6 Balu who deposed to have seen the occurrence of the incident from the pumping station situated by the side of the road on which incident occurred. This defence was put to PW-4 Mangala. She denied occurrence of any such act of scuffle between accused and deceased. Both the eye witnesses are coming with the specific case that a cement block was dropped on the head of Maya by the accused. In this way, the defence of sustaining injuries accidentally by Maya is denied by one eye witness and was not put to other eye witness. It is settled principle of law that ocular evidence overrides the opinion of an expert. Considering the consistent and un-shattered testimony of the eye witnesses, the prosecution succeeds to establish that the cause of injury on the person of Maya was the act of the accused to drop concrete block on her head. Considering this aspect, opinion of the medical officer that the injury is possible

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either way, i.e., either by the act of the accused or by fall on the ground, does not assume any importance.

16. Learned counsel for accused argued that if the concrete block which as per the contents of the panchanama weighs 20 kg is dropped on the head of the person, the head of the victim will be crushed. He did not put this possibility to medical officer who is an expert to answer this question. So, the arguments of learned defence counsel is based on assumption. The injury sustained by victim because of dropping of 20 kg concrete block on her head will depend on how the block hits the head of the victim then it may result in different injuries than the injury which may have occurred because of dropping of the stone on the center of the head or on the forehead. Considering this aspect, the argument of learned defence counsel based on assumption does not lead to conclusion that Maya did not sustain injury as deposed by the prosecution witnesses.

17. In view of the above reasons, I come to the conclusion that Maya died because of sustaining injury by the act of the accused. So, the death of Maya squarely comes within the definition of homicide. I, therefore, answer point no.1 in the affirmative.

**As to Point Nos.2: -**

18. Let's first consider the evidence of PW-6 Balu. PW-6 Balu deposed that he is working at pumping station situated on Tapovan Road. His cross examination reveal that he resides in a house situated abiding to the pumping station. So, his presence at the place of incident at the time of occurrence is natural. He deposed that the saw accused and his wife quarreling in the slum situated before pumping station. He further deposed that he had not taken the quarrel seriously as accused and the deceased often use to quarrel. This evidence of PW-6 Balu reveals that he was well acquainted with accused and his wife because of their notorious quarrels every day. He deposed that accused and the deceased came before pumping station and there accused dropped stone on the head of his wife and then ran away from the place of incident. He deposed that immediately after the incident, his colleague Sunil informed the police about the incident. His evidence reveal that pool of blood was collected on the road and the lady died immediately. He identified the cement block article no.1 shown to him as the block used by accused to inflict injury. During his cross examination, it was suggested to him that he is not aware about the incident. He denied this suggestion. He also denied that he is tutored by the policeman to depose before the Court. His evidence is not shattered during his cross examination. He proved about all the facts plainly. His evidence is thus, reliable to establish that Maya sustained injury on her head as cement block was dropped on her head by the accused.

19. Another eye witness PW-4 Mangala is a child witness. It was, however, confirmed that she can rationally answer the questions put to her about the incident. Her evidence reveals that while she was playing outside her house, she found accused and Maya quarreling. She then deposed that around 8.00 p.m., Maya proceeded towards road

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when the accused followed her. When they were on the road, accused kicked her on abdomen. Maya fell down on receiving kicks. Accused then picked up stone beside the road and dropped it on the head of Maya. She deposed that Maya sustained bleeding injury on the head and then accused ran away from the place of incident. She deposed to have proceeded to her mother and narrated the incident. During her cross examination, it is brought on record that PW-4 Maya is not having sense of time and she cannot make out what is the time by looking to the clock. In her cross examination, it is also brought on record that her memory was refreshed by the policeman on the day on which her evidence was recorded before the Court. During her cross examination, however, it was suggested to her by the defence that at the time of incident, accused was pulling hand of Maya saying her to come back to home. Witness admitted this suggestion. It was also suggested to her that Maya tried to get away from the accused forcibly and in the process fell down on the road. Mangala denied this suggestion. The suggestions put to her reflect that defence is not denying her presence at the place of incident. Her evidence is also not shattered during cross examination. Her presence at the place of incident seems natural. Considering these strong points of her evidence, the fact that her memory was refreshed by the policeman on the day when her evidence was recorded and the fact that she is not having a sense to read the clock does not create any obstacle to rely on her evidence.

20. PW-3 Leelabai was informed about the incident by PW-4 Mangala. She is informant who reported the matter at Panchavati Police Station. She deposed to have witnessed the circumstances preceding the incident. Her evidence reveal that accused and Maya were married before 3 years. They often use to quarrel because accused use to suspect character of Maya. Her evidence reveals that on the day of incident, at about 5.00 p.m., accused and deceased returned from work. After Maya cooked food, quarrel erupted between Maya and accused. Her evidence reveals that in the process of quarrel, Maya and accused came to her house. As they got cool response from Leelabai and her husband, Maya proceeded towards road and the accused followed her. During her cross examination, it is brought on record that the accused was persuading Maya to come back to his house but Maya was reluctant to come back to the house. Leelabai further deposed that her younger daughter Mangala who was playing outside the house, after some time informed her that accused gave blow of stone on the head of Maya. She, therefore, rushed towards the road and found Maya lying on the road in pool of blood. She found that Maya was no more.

21. PW-3 Leelabai deposed that boy at the pumping station informed police about incident on phone and after few minutes, police vehicle came there and carried Maya to Hospital. She deposed to have proceeded to Panchavati Police Station and lodged the report. The remark on FIR, however, reveal that crime was registered at 0-30 a.m. On 9/12/2005 i.e. After about 2 ½ hours of occurrence of the incident. Learned defence counsel argued that delay in lodging FIR is not explained by the prosecution. Evidence of Leelabai that she proceeded to police station, immediately from the place of incident

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is not shattered during her cross examination. Leelabai may have taken hardly half an hour to reach to police station. The delay in registering FIR thus seems to have caused because of inappropriate working style of the police. Evidence of PW-1 Mulchand and PW-3 Leelabai reveal that information regarding occurrence of the incident was received by the police immediately after the incident and the police vehicle came to the place of incident within few minutes. So, the police machinery swung in action immediately after the incident. Inquest panchanama at Civil Hospital was recorded at 11.45 p.m. i.e. Even before the offence was registered by PSI Mr. Kazi. So, Leelabai is not responsible for delay in lodging the FIR. The delay in registering the FIR is because of inappropriate functioning of the police machinery. Every delay in lodging FIR is not fatal to the prosecution. The delay in lodging FIR resulting in introduction of concocted and after thought facts in the FIR can only create suspicion about the authenticity of the FIR. In this case, the FIR lodged by Leelabai does not suffer from any exaggeration or introduction of facts in the FIR. PW-3 Leelabai who lodged the First Information Report is not claiming that she is an eye witness of the incident. The FIR is plain narration of the fact that Leelabai received information about incident from Mangala. In the case of Zahoor and others Vs. State of Uttar Pradesh (AIR 1991, SC,40) Hon'ble Apex Court held that the delay in filing FIR by itself is not sufficient to reject the prosecution case unless there are clear indication of fabrication. Considering all these aspects, the delay in lodging the FIR does not create any suspicion about the authenticity of the FIR.

Adjourned till tomorrow as Court time over.

**Date :09/05/2006.**

**(A.H. Nathani)**  
**II Ad-hoc Additional Sessions Judge,**  
**N A S H I K**

Continued today on 10/5/2006.

22. PW-1 Mulchand deposed to have reached the place of incident when Mangala requested him for help. He is resident of Amardham slum where accused, victim and informant resides. So, he is acquainted with the residents of the slum. He deposed that when he proceeded to the road approaching Tapovan with Mangala, he found Maya lying on the road with injury on her head. The lady was profusely bleeding. He deposed that after some time, police came there and carried Maya to Civil Hospital. The witness deposed that apart from injury on head, there were abrasions on left elbow and shoulder of the deceased. No such injuries are, however, found on the body of the deceased by Dr. Lunavat. So, the evidence of Mulchand is only useful to point out undisputed fact that Maya was lying on Tapovan road with profusely bleeding injury on her head.

23. The above discussed ocular evidence of child witness Mangala whose presence at the time of the incident is not disputed by the defence reveal that Maya sustained injuries on her head because of the act of accused to drop a concrete block on her head. Evidence of child witness Mangala is supported by cogent and reliable evidence of

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another eye witness PW-6 Balu whose presence on the place of incident as mentioned above by me, is natural. He also testified to the effect that it was the act of accused to drop stone on the head of Maya which resulted in injury on her head. In the case of Adanki Vs. Public Prosecutor, (1995, Cri.L.J., 2633, SC) it was observed that when the child witness deposes in a straightway manner and his evidence is corroborated by other eye witness, it will be appropriate to rely on the testimony of such a witness. Considering these observations, evidence of PW-4 Mangala and PW-6 Balu read together establish that the accused caused injury to Maya by his act of dropping heavy stone on her head.

24. Evidence of investigating officer PW-7 Mr. Kazi and panch witness PW-2 Suresh reveal that accused was arrested at about 1-30 a.m. On 9/12/2005 and clothes having blood stains were seized from the possession of the accused by recording seizure memo Exh.9. During cross examination of PW-2 Suresh he deposed that his signature was obtained on panchanama at about 8-30 p.m. He, however, denied the suggestion that he had not seen clothes of the accused and clothes of accused were not seized in his presence. During his examination in chief, he very specifically deposed that when he was called at the police out post, he saw the accused and he found that clothes of the accused were having blood stains. He specified that shirt on the person of accused was orange coloured and his pant was chocolate coloured. Contents of panchanama Exh.9 reveal that the description of the clothes given by Suresh is similar to the description of the clothes mentioned in the panchanama. Considering this aspect, the description in the evidence of PW-2 Suresh does not lead to conclusion that investigating officer Mr. Kazi have not recorded seizure memo of seizure of clothes of the accused in presence of panchas. The fact of arrest of accused is mentioned in the charge sheet. There can be no dispute about arrest of the accused. If it is so, then it was for the defence to come with the contradictory circumstances about arrest of accused. The defence has not suggested any contrary facts or circumstances about his arrest by the investigating officer. Considering these circumstances, the evidence of PSI Mr. Kazi and panch witness PW-2 Suresh inspire confidence and is required to be considered to prove the fact that accused was arrested at about 1-15 a.m. On 9/12/2005 i.e. After about 3 hours of the incident.

25. Evidence of investigating officer reveal that he forwarded clothes of the accused, the stone found at the place of incident, Odhani found at the place of incident and samples of blood sailed and ordinary soil from the place of incident to Chemical Analyzer with the covering letter Exh.23. Covering letter Exh.23 bears the description of the clothes and articles. Report of Chemical Analyzer at Exh.17 reveal that the Chemical Analyzer received two sealed packets and four sealed parcels with intact seals. The report reveal that human blood was detected on the cement concrete block, Odhani, blood sailed soil, pant and shirt. The Analyst was, however, not able to determine blood group of the said blood stains. The accused has not given any explanation about presence of human blood on his body. The accused, however, is not denying his presence at the time of incident in which Maya sustained injury. So, the forensic evidence points out the undisputed

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fact of presence of accused at the place of incident when Maya sustained injury. The forensic evidence also points out that injury on the person of Maya was caused by cement concrete stone.

26. Medical Officer Dr. Lunavat on post mortem of Maya came to conclusion that she died because of hemorrhagic shock due to head injury. He deposed that injury on the head of Maya may have been caused because of dropping of stone on her head. He also supported the defence that injury may have been caused as Maya fell on stone. As I discussed earlier, the opinion given by medical officer that injury may have been caused because of dropping stone on the head of Maya is consistent with the ocular evidence. Whereas his other opinion is not supported by eye witnesses to whom it was put. In the case of State of Tamil Nadu Vs. P. Muniappan (AIR 1998, SC, 504) the prosecution case was based on circumstantial evidence. The medical evidence was not contrary to the circumstantial evidence, though it was not in clear terms supporting the prosecution case. Hon'ble Apex Court came to conclusion that in such situation, the medical evidence should be used in support of the circumstantial evidence. In the present case, ocular evidence in clear terms establish that accused inflicted injury to the deceased. So, the medico legal evidence of Dr. Lunavat about the opinion that the injury may have been caused to Maya by dropping of the stone on her head is required to be taken into consideration.

27. In view of the above reasons, I rely on the evidence of eye witness PW-4 Mangala and PW-6 Balu and medico legal evidence adduced by PW-5 Dr. Lunavat and come to conclusion that Maya sustained injury on her head as the accused dropped the cement concrete stone on her head. The accused is a prudent man. From the above discussed facts, it is required to be inferred that he was knowing consequences of his act of dropping 20 kg stone on the head of his wife and he was aware of the fact that his wife will certainly die as a result of dropping of 20 kg stone on her head. It is also necessary to consider the subsequent conduct of the accused. Evidence of PW-4 Mangala and PW-6 Balu disclose that accused after dropping stone on the head of Maya ran away from the place of incident. This act of accused further reveal that he intentionally inflicted injury to his wife and fled away from the place of incident. The act of accused is thus covered by the definition of murder and he proved to have intentionally inflicted injury on the head of Maya which he knew was sufficient in the ordinary course of nature, to cause her death. I, therefore, answer point no.2 in the affirmative.

**As to Point No.3: -**

28. Accused is held guilty of the offence punishable under Section 302 of Indian Penal Code. I proceed to hear the accused and learned APP on the point of sentence.

29. I heard the accused and the prosecutor on the point of sentence. Learned prosecutor submitted that considering the heinous act of accused of intentionally causing death of his wife, capital punishment be awarded to him. The accused submitted that his blind

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mother is dependent on him. He, therefore, requested for taking lenient view. Age of the accused as per the charge sheet is 22 years. There is no criminal record of the accused. The above discussed evidence establishing the commission of the offence by the accused reveal that the act of the accused was not premeditated. Considering the circumstances in which the accused committed the offence, the present case cannot be said to be rarest of rare case in which capital punishment should be awarded for the commission of offence of murder. Considering the above discussed circumstances, I take lenient view while passing the sentence. I pass the following order.

**-: O R D E R: -**

1. Accused Manoj is convicted of the offence punishable under Section 302 of Indian Penal Code, vide Section 235(2) of Code of Criminal Procedure. He is sentenced to undergo imprisonment for life. He is also sentenced to pay fine of Rs.2000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.
2. The accused is in custody from 9/12/2005. The period of his detention be considered while computation of sentence.
3. Seized property being worthless, be destroyed after the appeal period is over.

**Date :10/05/2006.**

**(A.H. Nathani)**  
**II Ad-hoc Additional Sessions Judge,**  
**N A S H I K**

**Analysis:** The perfect evidence coming from two eyewitnesses did not leave any room for the defence to create doubt about the prosecution case. The first issue regarding homicidal death was required to be answered after considering treaties of medical jurisprudence and the collective evidence on record. The expert examined by the prosecution deposed in favour of the prosecution and the defence. The expert spoke about the possibilities, whereas the eyewitnesses testified about the definite fact that eliminated the life of the victim.

In this case, also, the intention to murder was required to be gathered on the basis of the act of the accused immediately preceding the death of the victim. It is true that the accused did not cultivate the intention to cause death when he had a quarrel with the victim or when he followed the victim to persuade her to come home, but when he picked up a 20-kg piece of concrete and threw it on the head of his wife, who was lying on the ground, he definitely had the intention and the knowledge to cause injury to the vital part of his wife, which was sufficient to cause her death. Clause 4 of section 300 of the Indian penal code also includes the act of causing bodily injury of which the person causing injury had knowledge that his act of causing bodily injury will certainly result into death of the person to whom injury is caused.

Lacuna in the prosecution's evidence or a discrepancy in the prosecution's evidence doesn't always lead to doubt about the prosecution's case. In the present case, the defence succeeded in eliciting from the mouth of the expert the possibility of accidental death; the forensic evidence could only prove the presence of human blood on the clothes of the deceased; one of the panch witness who was examined to prove the arrest of the accused at 1:30 am, i.e., after 4 hours of the incident, stated that his signature was taken before the time of the incident. These were the flaws in the prosecution's evidence, but there was substance to explain and excuse these flaws. One has to understand that there may always be some errors in any act performed manually; this, however, doesn't make every investigation in a criminal case doubtful. Every aspect of these flaws is considered and is not ignored, and reasons are given as to why these are not material discrepancies in the prosecution case to disbelieve entered prosecution case.

Analysis is at end of the judgment