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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1120 OF 2013
(Through Jail)

Atmya @ Atmaram Ladkya Bhavar

Age - 22 Years,

R/o. Baijipada, Vandre, Tal. Shahapur.

Presently lodged at Kolhapur Central
Prison, Convict No. C-5542, Dist.
Kolhapur, Kalamba, Maharashtra - 416
007.

.. Appellant
(Org. Accused)

Versus

The State of Maharashtra

(Through Shahapur Police Station)

.. Respondent

.....

Appearances:-

Ms. Ameeta Kuttikrishnan	<i>Advocate (appointed) for the Appellant</i>
Mrs. A.S. Pai	<i>APP for the State</i>

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**CORAM : SMT. V.K. TAHILRAMANI &
SMT. I. K. JAIN, JJ**

DATE : JANUARY 13, 2015.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. This appeal is preferred by the appellant - original accused against the judgment and order dated 10.7.2012 passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No. 77 of 2010. By the said judgment and

order, the learned Session Judge convicted and sentenced the appellant as under:-

Convicted u/S.	Sentenced to
302, IPC	Life Imprisonment and fine of Rs. 1000/-, in default rigorous imprisonment for two months.
392, IPC	RI for 5 Years and fine of Rs. 500/-, in default RI for two months.
201, IPC	RI for 2 years and fine of Rs. 500/-, in default RI for two months.
397, IPC	No separate sentence is passed.

The learned Sessions Judge directed that all the substantive sentences of imprisonment shall run concurrently.

2. The prosecution case briefly stated, is as under:

- (a) Deceased Baijibai was the mother of PW 1 Jani @ Janubai. Janubai is the complainant in the present case. Janubai and Baijibai were both residing at Baijipada, Vandre, Taluka Shahapur, Dist. Thane. The house of Baijibai was situated in front of the house of PW 1 Janubai. The appellant was the grandson of Baijibai. The appellant was

demanding from Baijibai her gold ornaments, however, Baijibai did not give him the gold ornaments.

(b) On 19.9.2009, Baijibai proceeded to Vandre to purchase grocery articles. She went walking towards Vandre. At that time, she was alone. The appellant followed her. Baijibai did not come back home that evening. PW 1 Janubai came to know in the morning that Baijibai had not returned home the earlier evening. They searched for Baijibai in the houses of their relatives but Baijibai was not found anywhere. The appellant was also not seen since the date of the incident.

(c) The dead body of Baijibai was found in a jungle on 25.9.2009. No ornaments including gold and silver ornaments were seen on the body of Baijibai. Janubai and other suspected the appellant as he

was absconding from 19.9.2009. During investigation, Gold and silver ornaments of Baijibai were recovered at the instance of the appellant. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Sections 302, 392, 397 and 201 of IPC. The appellant/accused pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case,

arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant committed murder of Baijibai in order to rob her of her ornaments.

5. There is no eye witness in the present case and the case is based entirely on circumstantial evidence. The circumstances against the appellant are as under:-

- i. Last seen;
- ii. The appellant was absconding since the date of the incident i.e 19.9.2009;
- iii. Recovery of ornaments of Baijibai at the instance of the appellant.

6. As far as the circumstance of last seen is concerned, PW 1 Janubai and PW 3 Anil have deposed on this aspect. PW 1 Janubai has stated that she was residing at Baijipada. PW 1 Janubai has stated that Baijibai was her mother. Baijibai was residing in front of her house. The appellant was also residing at Baijipada with his father. He was married. They

used to go to purchase grocery articles to Vandre. On the day of the incident, Janubai along with her son-in-law PW 3 Anil and the appellant were sitting in front of the house. Baijibai proceeded to Vandre to purchase grocery articles. She went walking. At that time, she was alone. The appellant followed Baijibai. Baijibai did not come back in the evening. Janubai came to know about this fact the next morning. They all searched for Baijibai in the houses of their relatives but Baijibai was not found. The appellant was also not seen since that date. The dead body of Baijibai was found in a jungle after six days. The dead body was in decomposed condition. Janubai identified the dead body of her mother. She noticed that there were no ornaments that is gold ornaments and silver ornaments on the body of her mother. Janubai has stated that the appellant was demanding gold ornaments from Baijibai to give to his wife, however, Baijibai refused to give him any ornaments. They all suspected the appellant as the appellant was absconding since the day of the incident i.e 19.9.2009. Janubai then

lodged FIR.

7. PW 3 Anil was the son-in-law of PW 1 Janubai. Janubai was the daughter of deceased Baijibai. Anil has stated that he used to occasionally go to the house of Baijibai to meet her. Anil has stated that the incident took place on 19.9.2009. On 19.9.2009, he, his mother-in-law Janubai, his wife and the appellant were sitting in front of the house. Baijibai told them that she was going towards Vandre for purchasing grocery articles. Then Baijibai proceeded towards Vandre. The appellant also went behind Baijibai. Baijibai did not return home. After two days when Anil went to the house of his mother-in-law Janubai, she informed him that Baijibai had not come home and she was not traceable. Thereafter, the dead body of Baijibai was found in jungle in decomposed condition. Then, his mother-in-law Janubai lodged FIR. Thus, the evidence of PW 1 Janubai and PW 3 Anil shows that on 19.9.2009, when Baijibai proceeded to Vandre to purchase grocery articles, the appellant followed

her.

8. The evidence on record shows that when Baijibai proceeded towards Vandre for purchasing grocery articles, at that time, the appellant followed her. In such case, the appellant/accused has to explain when and where he parted company from deceased and how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principles which underlies Section 106 of the Evidence Act can be applied in cases of 'Last Seen'. In the case of **State of Rajasthan Vs. Kashi Ram**¹, the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on

¹ (2006)12 SCC 254 : AIR 2007 SC 144

circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

9. The next circumstance against the appellant is that from 19.9.2009, the appellant was absconding and he was traced by the police only on 28.9.2009. The evidence of PW 1 Janubai shows that on the day of the incident, when her mother Baijibai proceeded to Vandre for purchasing grocery articles, the appellant followed her. Thereafter, her mother did not come home and the appellant was also not seen

since that day.

10. PW 2 Tanhu was the son of Baijibai. He has stated that Baijibai was residing about 50 to 60 feet from his house. He went to the house of his mother and saw that her house was locked. He then inquired with his sister Janubai about the whereabouts of his mother. Janubai told him that on the earlier day, their mother had gone to Vandre to purchase grocery articles. Tanhu searched for Baijibai in the houses of his relatives but Baijibai was not found. Then they started searching for their mother Baijibai in the jungle. There they found the dead body of their mother. Tanhu has stated that the appellant is the son of his real brother and the appellant used to ask money from his mother Baijibai to consume liquor from time to time. Tanhu has stated that since the day of the incident, the accused was absconding.

11. One of the most clinching circumstance against the appellant is that the ornaments of the deceased were

recovered at his instance. PW 1 Janubai has stated that Baijibai was her mother. Baijibai used to wear mohanmal, two mangalsutra, ear tops, nose ring, silver bracelet etc. PW 2 Tanhu who is the son of Baijibai has stated that his mother used to wear mohanmal, mangalsutra, ear tops, nose ring, silver bracelet etc. Both PW 1 Janubai and PW 2 Tanhu have stated that when the body of Baijibai was found in jungle, no ornaments were seen on her body. PW 6 Makararam, PW 7 Budharam and PW 9 Subhash ran jewellery shops. All of them have stated that the accused came to their shops and sold gold ornaments to them. These ornaments have been identified by PW 1 Janubai as belonging to her mother.

12. PW6 Makararam has stated that he ran jewellery shop in the name of 'Pooja Jewellers'. His shop was situated at Wada. He has stated that on 21.9.2009, the appellant had come to his shop at about 12 noon. He brought one gold ornament and six beads. The appellant told him that his wife was suffering from illness, hence, he wanted to sell the said

ornaments. Makararam refused to purchase the ornaments as the appellant did not have any bill. The appellant then again came to his shop 10 minutes later and started weeping, hence, PW 6 Makararam purchased those ornaments from the appellant for Rs. 2020/-. Makararam has identified muddemal Article 11 as the said ornaments. He has also identified the accused as the same person who had come and sold him the said articles.

13. PW 7 Budharam has stated that he ran a jewellery shop in the name of 'Pooja Jewellers' at Wada. He has stated that on 23.9.2009 at 2.30 p.m., the appellant had come to his shop. The appellant brought one mohanmal and 8 beads with him. The appellant told him that his mother met with an accident. PW 7 Budhram purchased the gold ornaments from the appellant for Rs. 10000/-. Budharam identified the ornaments Article 10 as the same ornaments which were sold to him by the appellant.

14. PW 9 Subhash has stated that he ran jewellery shop in the name of 'Swaraj Jewellers' at Wada in District Thane. He has stated that the appellant sold 12 gold beads and one silver nose ring to him. Subhash refused to purchase the ornaments from the appellant, however, the appellant started weeping and saying that he was in need of money, hence, Subhash purchased those ornaments from the appellant for Rs. 800/-. Subhash has identified gold beads Article 8 and silver nose ring Article 9 as the same ornaments which were sold by the appellant to him.

15. The evidence on record shows that jewellery of the deceased was recovered at the instance of the appellant soon after the incident. The Supreme Court in the case of **Gulab Chand Vs. State of Madhya Pradesh**² upheld the conviction of the accused for murder and robbery only on the circumstance of recovery of articles of the deceased at the instance of the appellant. In the case of **Baiju @ Bharosa Vs. State of Madhya Pradesh**³, the Supreme Court held

² AIR 1995 SC 1598

³ AIR 1978 SC 522

that recent and unexplained possession of stolen articles can well be taken to be presumptive evidence of the charge of murder as well. In the said case, the accused was convicted for murder as well as dacoity. Similar view has been taken by the Supreme Court in the case of **Sanjay @ Kaka Vs State (N.C.T. of Delhi)**⁴. Similar view was taken by the division bench of this Court in its decision in the case of **Shaligram @ Raju Rambahadur Thapa Vs The State of Maharashtra**⁵. The incident has occurred on 19.9.2009 and the recovery has taken place on 2.10.2009 that is soon after the incident. Moreover, it is seen that in the present case, the appellant has not furnished any explanation in relation to articles of the deceased which were recovered at his instance after the incident.

13. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed murder of Baijibai in order to rob

4 2001 AIR SCW 767

5 Criminal Appeal No. 728 of 2013 decided on 20.11.2014 (Coram : Smt. V.K. Tahiramani & Shri. A.K. Menon, JJ)

her of her ornaments. There is no merit in the appeal. The appeal is dismissed.

14. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Ameeta Kuttikrishnan at Rs. 5000/-.

[SMT. I. K. JAIN, J]

[SMT. V.K. TAHILRAMANI, J]

रविंद्र आंबेकर