

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.327 OF 2001

Mankarnabai w/o Shankar Patil,
Age-28 years, Resident of:Moghan,
Tq. & Dist-Dhule.

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr. Bharat S. Deokar Advocate for Appellant.
Mr.S.D. Ghayal, A.P.P. for Respondent.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 04TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 10TH JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.]:

1. This Appeal is directed against the Judgment and order dated 26th June, 2001, passed by the Sessions Judge, Dhule in Sessions Case No.121 of 1998 thereby convicting accused/ Appellant -

Mankarnabai w/o Shankar Patil for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing her to suffer imprisonment for life and to pay fine of Rs.2000/-, and in default, to suffer further rigorous imprisonment for three months.

2. The prosecution case, in brief, is as under:-

A) Accused Mankarnabai and Mirabai w/o Shankar Patil (PW-11) are real sisters. Mirabai got married with Shankar Keshav Patil (PW-12). Accused Mankarnabai, younger sister of Mirabai got married with one Eknath Sukdeo Gangurde from Ravalgaon. She took divorce from him. Since Mirabai had no issue, with her consent the accused got married with Shankar Keshav Patil about five years prior to the incident. Both the sisters were staying in the house of Shankar Keshav Patil. The accused gave birth to two daughters namely Monali and Swati. At the time of incident Monali was

aged 3 years and Swati was aged 1 ½ years. Accused was also pregnant of three months. Since she was pregnant, she was staying at her home with her two daughters and Shankar and Mirabai were going out for agricultural work in the morning and were returning to home in the late evening. Mankarnabai and Mirabai some times used to quarrel, since Mirabai had no issue. The accused Mankarnabai used to neglect her daughters and was not taking proper care of them as expected. She also used to leave the house of her husband and used to go to her parents' house without giving information.

B) On 28th August, 1998 as usual Shankar (husband of accused Mankarnabai) and Mirabai (real sister of accused) left their home at about 10.00 to 10.30 a.m., for agricultural field for doing labour work. The accused had decided to kill her two daughters. Therefore, she came out of her home at about 11.30 to 12.00 noon along with her two daughters. She locked her house and kept the key with Shakirabai d/o Shaikh Abbas Manyar (PW-2),

who happens to her neighbour. The accused told Shakirabai that she was going to the field for agricultural work.

C) The accused was carrying her daughter Swati aged 1½ years in her arms, while her another daughter Monali, aged 3 years, was walking along with her by catching finger of her hand. Accused took her path with her two daughters on Dhadare road. Witness Anil Babu Patil (PW-3) was grazing his she buffaloes by the side of Moghan-Dhadare road. He saw the accused going with her two daughters towards Dhadare village. The accused took her two daughters to the well situated in the field of Zavaru Sonka Patil (PW-10). The said well is common well of Zavaru Sonka Patil and Rajendra Nimba Patil (PW-9). Since those were rainy days, there was ample water in the well. The accused threw her both daughters in the water of the well with an intention that they would die by drowning. Thereafter she hurriedly left the scene of the offence and started going towards Dhadare village.

She was wearing nine yard red coloured sari. While she was going speedily on the road, her movements were fast and she was looking forward and backward to take precaution that nobody would see her committing the offence. Witness Pandurang Kashinath Gavali (PW-4) was cutting the grass in the fields, which were adjoining Dhadare road. He saw the accused alone going towards Dhadare village. He had also noticed that the accused was uneasy and her movements were fast. Similarly, witness Ashok Hiranman Bhil (PW-5) also saw the accused going alone on the road towards Dhadare village. At that time he was spreading insecticide on the cotton crop in the fields of Ashok Gobji Patil. The fields are adjoining to Moghan-Dhadare road. This witness had observed that the accused was going speedily on the road looking forward and backward and she was wearing nine yard red coloured sari.

D) At about 5.00 p.m. witness Daga Narayan Mali (PW-8) was going from the Bandh of the field

of Zavaru Sonka Patil and saw the dead bodies of two girls floating on the water of the well. He got afraid and therefore informed about the same to the owners of the well - Zavaru Sonka Patil and Rajendra Nimba Patil. The said fact was communicated to Police Patil of the village Ramrao Pundalik Patil (PW-7). All the villagers assembled near the well.

E) As usual Shankar Keshav, husband of accused and Mirabai came to their home in the late evening at about 7.30 to 8.00 p.m. They found that the accused Mankarnabai and her two daughters were not at home and the house was locked. They thought that the accused might have gone to her parents. On an enquiry with neighbour, they got the keys of the house from Shakirabi. They came to know that at about 11.00 a.m. the accused had left the house with her two daughters Monali and Swati. They also made local enquiry in the village. At night time the Police Patil came to their home and told to Shankar that the dead bodies of his two daughters

were lying in the well of Zavaru Sonka Patil. Therefore, Shankar immediately went to the scene of the offence. He identified the dead bodies of his daughters Monali and Swati. The accused was absconding.

F) On that night of 28th August, 1998 Sanjay Shukla, Police Sub-Inspector (PW-13) was working in the police station. At about 23.35 hours he was informed on telephone by Ramrao Pundalik Patil, Police Patil of village Moghan that two dead bodies were found in the well of Zavaru Sonka Patil. On the said information he registered accidental death in the police station under A.D. No.22 of 1998 under Section 174 of the Code of Criminal Procedure.

G) P.S.I. Shukla immediately started investigation in the matter and he went to the scene of offence. Two dead bodies of the girls were taken out from the well with the help of the villagers. The dead bodies were identified and the

same were sent to civil hospital, Dhule for postmortem. Spot panchnama was drawn in presence of two panch witnesses. Inquest panchnamas' on the two dead bodies were drawn in presence of panch witnesses. Then the Investigating Officer recorded statements of witnesses. While recording statements of witnesses, it was revealed that an offence under Section 302 of the I.P. Code had been committed by the accused and therefore PSI Shukla filed F.I.R. on behalf of the State in Mohadi Nagar Police Station and on the basis of said report, crime under C.R. No.75 of 1998 was registered. The investigating officer carried out further investigation in the crime. Accused was absconding. On 28th October, 1998 accused was arrested from the house of her relatives at Shegaon. Further investigation was carried out. After completion of the investigation, the charge-sheet was filed against the accused and case was committed to Sessions Court as offence under Section 302 of the I.P. Code was triable by the Sessions Court.

H) A charge for an offence punishable under Section 302 of the I.P. Code was framed against the accused and the same was explained to her. The accused pleaded not guilty and claimed to be tried. The defence of accused is of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted accused for the offence punishable under Section 302 of the I.P. Code and sentenced her to suffer imprisonment for life and to pay a fine, as afore-stated. Hence this Appeal by the accused.

4. Mr. Deokar, learned counsel appearing for the accused/ Appellant submits that there was no eye witness to the incident and the case of the prosecution is based on the circumstantial evidence only. There is no direct evidence against the accused. He further submits that the chain of circumstances on which reliance was placed by the prosecution, has not been established beyond

reasonable doubt by the prosecution. He further submits that there are several contradictions, omissions, discrepancies and improvements in the evidence of the prosecution witnesses in respect of various circumstances and therefore reliance could not be placed on the oral testimony of said witnesses. He further submits that according to the prosecution case, on 28th August, 1998 in between 11.00 a.m. to 1.00 p.m. accused committed murder of her two minor daughters i.e. Monali - aged about 3 years and Swati - aged about 1½ years, by throwing them in a well. It is the case of the prosecution that on the same day at about 5.00 p.m. PW-8 Daga Narayan noticed that dead bodies of said two minor girls were floating on the water of well. Learned counsel, referring to *Modi's Medical Jurisprudence and Toxicology*, submits that the entire prosecution case is unbelievable because normally it takes at least 24 hours time to float the dead body on the surface of water, in case the body thrown in the water. He further submits that Monali and Swati were the

daughters of the accused Mankarnabai and there was no motive for her to commit murder of her own daughters. He further submitted that the trial Court has not properly appreciated the evidence brought on record and came to the wrong conclusion.

5. Mr. Deokar, learned counsel appearing for the accused, submits that there is no direct evidence to connect accused with crime and there was no enmity between accused and deceased and therefore the sole circumstance that deceased were last seen in the company of accused, is not sufficient to convict accused. In support of his submissions, he placed reliance on the exposition of law in the case of Inderjit Singh and another vs. State of Punjab¹. In support of his submissions regarding appreciation of evidence when the case is based on the circumstantial evidence, Mr. Deokar, learned counsel also placed reliance on the case of Niranjana Panja vs. State of West

¹ A.I.R. 1991 S.C. 1674

Bengal². The learned counsel, therefore submits that the Appeal may be allowed.

6. The learned A.P.P. appearing for the State submits that the case of the prosecution is based on the circumstantial evidence and the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt. He further submits that after considering the entire evidence on record the trial Court has convicted the accused and the findings recorded are in consonance with the evidence brought on record. He, therefore submits that the Appeal may be dismissed.

7. The prosecution examined PW-1 Dr. Avinash Shamrao Ruikar. He deposed that he alongwith Dr. S.D. Pagar carried out postmortem on the dead bodies of Monali and Swati. Regarding the post-mortem on the dead body of Monali, he deposed that a rigor mortis was passed of. Postmortem lividity

² 2010(4) Mh.L.J.(Cri.) 102

was seen on back and it was fixed. There was whitish blood stained froth coming from mouth and nostrils. About the external injuries noticed by him, he deposed that part of right upper limb medically, lips, both eye lids, left buttock eaten by aquatic animals partly. On internal examination, he noticed injuries as mentioned in Column No.19. her brain was congested, both lungs were congested, oedemotus and loaded with water, surface were showing rib marks. In the stomach about 200 cc. semi-digested food was found, without any peculiar smell. Mucosa healthy. Her liver, spleen and kidneys were congested. As per his opinion, cause of death was asphyxia following drowning. However, viscera was preserved for C.A. Viscera report is negative.

. He further deposed that thereafter he conducted postmortem on the dead body of Swati. On the external examination he noticed that, rigor mortis was passed off. Postmortem lividity seen on back fixed. There was whitish blood stain forth

coming out of nostrils and mouth. About the external injuries, he deposed that, part of both ears, nose lips, right cubital fosa were eaten by aquatic animal. On internal examination, he found her brain was congested, both lungs were congested oedematous and loaded with water. Surfaces were showing rib marks. In stomach about 100 cc. semi-digested food without peculiar smell was found, mucosa was found healthy. Her liver, spleen, kidneys were congested. Her viscera was preserved for C.A. Report of C.A. is negative. In his opinion, the cause of death was asphyxia following drowning.

. Upon careful perusal of the evidence of PW-1 Dr.Avinash, it is clear that this witness has not given the opinion about the exact time of death of both the girls.

8. Prosecution examined PW-2 Shakirabi d/o Shaikh Abbas. She deposed that house of accused is adjoining to her house. She deposed that on the

day of incident, she was in her house. The time was 12.00 noon. The accused handed over the keys of her house. The accused was in her possession her two daughters by name Monali and Swati. The accused left the house.

9. The prosecution examined PW-3 Anil Bapu Patil. He deposed that he knows the accused Mankarnabai. The incident took place on 28th August, 1998. In the morning at about 10.00 a.m. he was grazing his she-buffaloes on the road leading from Moghan to Dhadare. At that time the accused Mankarnabai was going for her work with her two daughters. One daughter was walking with her and another was on her waist. She was going towards Dhadare village. Thereafter he came to know that two daughters of the accused were found in the well of Bhavadu Sonka Patil.

. Thus if the evidence of this witness PW-3 Anil is compared with the evidence of PW-2 Shakirabi, their version is not consistent and the

same is contradictory to each other. PW-2 Shakirabi deposed that accused left the house with her two minor daughters at about 12.00 noon, while PW-3 Anil deposed that in the morning at about 10.00 a.m. when he was grazing his she-buffaloes on the road leading from Moghan to Dhadare, at that time he saw that accused Mankarnabai was going towards Dhadare village, with her two daughters.

10. The prosecution examined PW-4 Pandurang Kashinath Gavali. He deposed that he knows the accused. On the day of incident at about 12.00 noon he was cutting the grass in the fields adjoining to Dhadare road. He saw the accused alone going on the Dhadare road. Her movements were showing that she was uneasy. Her movements were fast.

. Thus if the evidence of this prosecution witness PW-4 Pandurang is perused, he deposed that On the day of incident at about 12.00 noon when he

was cutting the grass in the fields adjoining to Dhadare road, he saw the accused alone going on the Dhadare road. Thus, as per the version of this witness PW-4 Pandurang, at 12.00 noon the alleged offence was already committed and thereafter accused was going alone on Dhadare road.

11. The prosecution examined PW-5 Ashok Hiranman Bhil. He deposed that on the day of incident he was spraying insecticide on the cotton crop in the fields on the road Moghan to Dhadare. That time he saw the accused going speedily on the road looking backward and forward on the road. She was going on the road alone. That time was about 12.30 noon. The accused had worn 9 yard sari of red colour.

. Thus all these four prosecution witnesses i.e. PW-2, PW-3, PW-4 and PW-5, who are the star witnesses of the prosecution, are not corroborating with each other and the time of the alleged incident as given by these three witnesses

is not at all matching. As per the version of PW-2 Shakirabi, on the day of incident, accused left her home with her two daughters at 12.00 noon and if the same is believed to be true, then it was impossible that PW-3 Anil had seen accused along with her daughters at 10.00 a.m. on the road leading from Moghan to Dhadare. Further it is unbelievable that PW-4 Pandurang had noticed accused going alone on Dhadare road at 12.00 noon. Likewise the testimony of PW-5 Ashok is also not reliable that he has noticed accused alone going on Moghan to Dhadare road at 12.30 noon.

12. The prosecution examined PW-6 Shankar Vanaji Gavali. He deposed that his fields are adjoining to the fields of Zavaru Sonka Patil, in whose field the well is situated. On the southern side of his fields, there is a road from Dhadare to Moghan. Those were rainy days and there was ample water in the well. The well in question was constructed well. Thus this witness has given the description of the well where the incident

occurred and nothing more than that.

13. PW-7 Ramrao Pundalik Patil is a police patil of village Moghan. He deposed that the incident took place on 28th August, 1998. One Daga Narayan Mali had come to him in the evening time at about 5.00 to 6.00 p.m. and told him that two girls had fallen in the well of Zavaru Sonka Patil. He took 3-4 persons and went to the well of Zavaru Sonka Patil and noticed that two dead bodies of girls were floating on the water. Those were the daughters of accused. He came to home and gave information to Mohadi Police Station on telephone. He cannot say how the two girls had fallen in the well. Thus this witness has deposed that he has reported the matter to the police, on telephone.

14. PW-8 Daga Narayan Mali deposed that on the day of incident, in the evening at about 5.00 p.m. he was in his fields. When he was going from the Bandh of Zavaru Sonka Patil, the two girls

were noticed floating on the water of well. Those girls were dead. He got afraid and informed the fact to the owner of the well. He does not know how the girls had fallen in the well. Thus this witness is examined on the point that he noticed dead bodies of two girls in the concerned well.

15. PW-9 Rajendra Nimba Patil deposed that the incident had taken place two years back from recording of his evidence. He was in his fields. Zavaru Sonka Patil is his uncle. The well is common belonging to him and Zavaru Sonka. Daga Narayan Mali had met him and told him that two dead bodies of the girls were floating in his well. The same was informed to the police patil by his uncle. His uncle had gone to the police patil for giving information. Thus, this witness is co-owner of the concerned well.

16. PW-10 Zavaru Sonka Patil deposed that his fields are situated on Moghan-Dhadare road and there is a common well in his field. At that time

there was ample water in the well. The incident took place about three years back. In the evening he came to know that two girls had fallen in his well. Those girls were the daughters of Shankar Keshav. He cannot say how the girls had fallen in the water of the well. This witness is also co-owner of the concerned common well.

17. The prosecution examined PW-11 Mirabai w/o Shankar Patil. She deposed that Shankar Keshav Patil is her husband. Accused Mankarnabai is her sister. She deposed that she had no issue for last 20 years after the marriage. The first marriage of the accused was solemnized with a person from village Ravalgaon. Accused took divorce from him and then she married with Shankar, husband of this witness. Both the sisters i.e. she herself and accused were staying in the house of Shankar. At the relevant time the accused had two daughters, namely Monali and Swati. They were in the age group of three years and one year. Accused got married with Shankar about five years back. At the

relevant time, the accused was pregnant and therefore accused used to stay at home and the witness was going to fields for labour work. The incident took place three years back. As usual on that morning she had gone to agricultural fields for doing labour work alongwith her husband Shankar. The accused stayed at home with her two daughters. The witness and her husband came home at night about 8.00 p.m. They noticed lock to their residence. One Shaikh Abbas was our neighbour. The name of his daughter is Shakirabi. Shakirabi handed over the keys of the house and told them that the accused had gone to fields alongwith her daughters. She thought that the accused might had gone to her parents place and therefore they made inquiries. At night time at about 10.00 p.m. the police patil came and informed them about the incident. She further deposed that she had no quarrel with the accused. Accused did not turn home for about two months after the incident.

18. The prosecution has examined PW-12 Shankar Keshav Patil. He is father of deceased two girls. He deposed that he had two wives, namely Mirabai and Mankarnabai (accused). Mirabai had no issue. At the time of incident the accused had two daughters by name Monali and Swati, aged about three years and two years, respectively. They all were staying together in one house. One Abbas Shaikh is his neighbour. Mankarnabai and Mirabai are real sisters. Mankarnabai had a first marriage with a man from Ravalgaon. Monali and Swati were his daughters. Accused got divorce from her first husband. Mankarnabai and Mirabai were staying happily in the house. Mankarnabai was giving good treatment to her two daughters. The incident took place 2-3 years back. On that morning he left home with Mirabai and had gone to another agricultural fields for doing labour work. They left home at about 10.00 to 10.30 a.m. The accused and her daughters were at home. In the evening at about 7.30 p.m. he himself and Mirabai came home. They noticed lock to the house. On enquiry with

neighbour they got keys of the house from the daughter of Shaikh Abbas. She told him tht accused Mankarnabai left home with her two daughters at about 11.00 a.m. soon after they had left home. They made local inquiry about the accused and her daughters, in the village, however they were not traced. The police patil came at night time and told him that his two daughters were found dead in the well water of Zavaru Sonka. Therefore he went to the well of Zavaru Sonka and identified the dead bodies of her daughters. Thereafter accused came to his home after a gap of 1½ month. During the said period, he had tried to trace her but his attempts failed. He denied that Mirabai and Mankarnabai had quarrels in the house.

. As this witness PW-12 Shankar has not supported the prosecution case, the prosecution declared him hostile and he was cross-examined by the prosecution. During the course of cross-examination, he stated that police had recorded his statement. He stated that he has not told to

the police that Mankarnabai and Mirabai had quarrels on trifle grounds and similarly he has not told before police that accused Mankarnabai was ill-treating to her daughters by beating them. He denied that Mankarnabai (accused) was not taking care of her children. His attention was drawn to portion marked "A" of his statement before the police. He denied that he has stated the said portion before police. He further stated that he himself, Mankarnabai and Mirabai came together in the Court on that day. He stated that the accused is staying with him from the day when she returned after the incident. He stated that the accused had one son and one daughter from him. He denied that the accused is a hot tempered lady and she had a dispute with Mirabai and therefore she dropped the girls in the water of the well.

19. PW-13 Sanjay Shivdas Shukla is the investigating officer in this crime. He deposed about the manner in which he has carried out the investigation of the crime.

20. PW-14 Kalidas Anandrao Potdar is a police constable. He deposed that On 28th October, 1998 he was attached to Local Crime Branch, Dhule. He deposed that Shri Rathod, police inspector of Local Crime Branch had information that the accused Mankarnabai was absconding since the commission of the offence and she had taken shelter with her relatives at Shegaon. He further deposed that he along with police party went to Shegaon and arrested the accused. He further deposed that on inquiry it was revealed that the accused had come to Shegaon prior to fifteen days.

. During the course of cross-examination, PW-14 Kalidas was unable to state when and what day Mohali police station informed L.C.B. office that the accused was absconding since the date of commission of the offence. He was unable to say on 27th October, 1998, as to when Shri Rathod, police inspector told them about the information that the accused was hiding herself at Shegaon. He was

unable to tell the distance between Dhule to Shegaon. He stated that he had not contacted the local police of Shegaon because they had the address of the accused. He was unable to tell the name of area of Shegaon where accused was found. He was unable to tell the name of the relative of the accused in whose house she was found. He was unable to tell the make and registration number of the vehicle in which he travelled from Dhule to Shegaon. He was unable to tell the full name of the driver of the vehicle. He has not recorded any statements of the persons from Shegaon.

21. Thus from the perusal of the evidence of PW-14 Kalidas, it is clear that his version is not at all believable that he arrested the accused from Shegaon and therefore reliance cannot be placed upon his oral testimony.

22. The prosecution examined PW-15 Rohit Kashiram Rathod, police inspector attached to L.C.B. Dhule. According to the prosecution this

witness received the information that after the commission of alleged offence, accused was hiding herself at Shegaon and this witness directed PW-14 Kalidas to go to Shegaon and arrest the accused. However upon careful perusal of the cross-examination of this witness, it appears that his version is also not believable and reliance cannot be placed upon his evidence.

23. We have discussed the evidence of prosecution witnesses in detail. The prosecution has relied upon the circumstance that both the girls (deceased) were lastly seen in the company of the accused. The evidence of PW-2, PW-3, PW-4 and PW-5 does not corroborate with each others, since they have stated the different timings. The prosecution has not proved beyond reasonable doubt the circumstance of 'last seen together'. Assuming that even if the prosecution has proved the circumstance of 'last seen together', that itself is not sufficient to base the conviction. The Supreme Court in the case Rambraksh alias Jalim

vs. State of Chhatisgarh³ held that, it is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

24. The Supreme Court in the case of Inderjit Singh and another vs. State of Punjab, supra, in Para-2 of the Judgment held that:-

3 A.I.R. 2016 S.C. 2381

"2. After giving our careful consideration, we are unable to agree with the Courts below. These circumstances are not sufficient to establish guilt of the accused. It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No.1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. It is no doubt true that deceased's death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly sufficient to establish the guilt of the

accused. The circumstance, i.e. the accused also had no enmity between the accused and the deceased and the witness would also show that the accused also had no enmity against the deceased. Therefore, this circumstance is neutral. However, now coming to the recovery of the gun, the High Court has acquitted him of that charge. The only relevant circumstance as pointed above is that the appellants and the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result, the convictions and sentences awarded by the Courts below are set aside. The appeal is allowed. The appellants be set at liberty."

25. It is to be noted here that the probable defence taken by accused Mankarnabai cannot be lost sight of. In her statement recorded under Section 313 of the Code of Criminal Procedure, the accused stated that her two daughters had already gone to the fields with Mirabai and they were missing. She further stated that she had gone to Mohadi police station at about 12.00 noon with her

brother Sharad, who is a auto rickshaw driver, to lodge a report about missing of her daughters, but the police present in the police station told her to come afterwards and so she came back to Dhule and thereafter she did not go to the police station. She further stated that she herself and her brother made attempt to trace her daughters but she could not trace them and therefore her younger brother Sharad brought her to Dhule. She stated that she was arrested at Dhule only and not at Shegaon.

26. In the present case, the prosecution has not brought on record the exact time when the death of two girls took place. The Division Bench of this Court in the case of Suresh Vithal Parkar vs. State of Maharashtra⁴, observed in Paragraph Nos.12 to 14 as under:

"12. The prosecution, therefore, relies upon the following circumstances:-

4 2015 ALL M.R.(Cri) 1287

(a) The homicidal death of deceased Asha in the house which was occupied by the appellant and deceased Asha.

(b) Failure of the appellant to explain under Section 106 of the Indian Evidence Act about the manner in which deceased Asha had died, and

(c) Deceased Asha being last seen alive in the company of the appellant.

"13. As far as the first circumstance is concerned, it cannot be taken as an incriminating circumstance. In respect of the second circumstance i.e. failure of the appellant to offer any explanation, a reference at this juncture may usefully be made to the judgment of the Supreme Court in Shambu Nath Mehra vs. State of Ajmer⁵. The Supreme Court in the aforesaid judgment has held that Section 106 of the Indian Evidence Act is not a substitute for the burden of proof which rests on the prosecution. In the present case, the prosecution has not been able to establish the exact time of death nor has the prosecution been able to establish the presence of the appellant in the house at about the time when the offence was

5 A.I.R. 1956 S.C. 404

committed. In the absence of such evidence, the failure of the appellant to offer any explanation under Section 106 of the Indian Evidence Act cannot be used as a circumstance against the appellant nor can a presumption of guilt be drawn on the failure of the appellant.

14. The only circumstance, therefore, against the appellant is the third circumstance that PW 2 - Umesh, when he had gone for attending his duty, had seen the appellant and deceased Asha in the house. Admittedly, the appellant was residing in the house and, therefore, his presence in the house by itself is not suspicious. As pointed out by us above, the prosecution has not been able to establish the exact time of death of deceased Asha and, therefore, the circumstance that the appellant and deceased Asha were seen together by PW 2 - Umesh cannot be said to be an incriminating circumstance which would prove the offence against the appellant beyond reasonable doubt."

27. It is clear from the facts of the present case that the prosecution case is entirely based upon the circumstantial evidence. Learned counsel

appearing for the Appellant rightly placed reliance on the exposition of law by the Supreme Court in the case of Vijay Shankar vs. State of Haryana⁶. In Para-8 of the Judgment, the Supreme Court held that:-

"8. There is no eye witness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence vide Sharad Birdhichand Sarda v. State of Maharashtra⁷. The same view was reiterated

6 (2015) 12 S.C.C. 644

7 (1984) 4 S.C.C. 116

in Bablu v. State of Rajasthan⁸."

28. Upon careful scrutiny of the evidence on record, the prosecution has not promptly established the motive for alleged commission of offence by the Appellant. The quarrel between the Appellant and Mirabai, the sister of the Appellant can hardly be the ground for commission of alleged offence. PW-12 Shankar, husband of the Appellant did not support the prosecution case and his evidence shows that the Appellant was taking proper care of both the daughters. There is also force in the argument of the counsel appearing for the Appellant that the entire prosecution case is unbelievable because as per the opinion given on Page No.134 in Modi's Book of Medical Jurisprudence and Toxicology (Twentieth Edition), generally, time of 24 hours is required for appearance of dead body on surface of water after drowning.

8 (2006) 13 S.C.C. 116

29. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution case rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient and convincing so as to prove the offence against the Appellant beyond reasonable doubt. The Supreme Court in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*⁹ has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other her innocence, the accused is entitled to have the

9 (1984) 4 SCC 166

benefit of one which is favourable to her.

30. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that the Appellant is entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 26th June, 2001, passed by the Sessions Judge, Dhule in Sessions Case No.121 of 1998, convicting the Appellant - Mankarnabai w/o Shankar Patil for the offence punishable under Section 302 of the Indian Penal Code and sentencing her to suffer imprisonment for life and to pay a fine of Rs.2000/- and in default of payment of fine to suffer further rigorous imprisonment for three months, is quashed and set aside.

(III) The Appellant - Mankarnabai w/o Shankar Patil is acquitted from the

offence with which she was charged.
Fine amount if deposited as per
impugned Judgment and order, be
refunded to the Appellant.

(III) The bail bond of the Appellant
shall stands cancelled.

[S.M. GAVHANE, J.]

asb/JUL17

[S.S. SHINDE, J.]