

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.313 OF 2013

Sambhaji s/o Kachru Kolhe,
Age-23 years, Occu:Agri.,
R/o-Khambala, Tq-Vaijapur,
Dist-Aurangabad

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Ms. Mansi N. Ghanekar Advocate for Appellant.
Mr. V.M. Kagne, A.P.P. for Respondent.

...

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

DATE OF RESERVING JUDGMENT : 27TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 2ND AUGUST, 2017.

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

1. This Appeal is directed against the Judgment and order dated 12th August, 2013, passed by the Additional Sessions Judge, Vaijapur in

Sessions Case No.234 of 2012 (Old Sessions Case No.323 of 2011) thereby convicting accused No.1/ Appellant - Sambhaji s/o Kachru Kolhe for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer imprisonment for life and to pay a fine of Rs.5000/-, and in default, to suffer further rigorous imprisonment for one year. The trial Court also convicted accused No.1/ Appellant - Sambhaji s/o Kachru Kolhe for the offence punishable under Section 201 of the I.P. Code and sentenced to suffer imprisonment for three years and to pay a fine of Rs.1000/-, and in default, to suffer further rigorous imprisonment for six months. Both the sentences were directed to be run concurrently. Hence this Appeal is filed by the Appellant challenging the conviction and sentence.

2. Before the trial Court there were in all four accused including Appellant/accused No.1 - Sambhaji s/o Kachru Kolhe, his father accused No.2 - Kachru Baburao Kolhe, his mother, accused No.3

Indubai Kachru Kolhe and his brother, accused No.4 Bhaskar Kachru Kolhe. The trial Court acquitted accused Nos.2 to 4 from the offence punishable under Section 498-A read with 34 of the I.P. code, with which they were charged. The trial Court also acquitted Appellant - Sambhaji s/o Kachru Kolhe from the offence punishable under Section 498-A of the I.P. Code.

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

A) It is alleged that accused No.1 Sambhaji on 25th May, 2011, at about 18.30 hours to 19.00 hours at the agricultural field of one Santosh Bhusare situated in Gut No.188 in the vicinity of village Ghaigaon, Tahsil-Vaijapur, committed murder of deceased Mandabai and his son Bitty by throwing them into the well after beating them and knowing or having reason to believe that the offence punishable under Section 302 of I.P. Code has been committed, caused certain evidence in

connection with the said crime to disappear i.e. threw dead bodies of deceased into the well with intention to screen himself from legal punishment.

B) It is alleged that on 25th May, 2011, or prior to that at Mauja Khambala accused No.1 being the husband of deceased Mandabai and accused Nos.2 to 4 being her in-laws, subjected her to cruelty on account that she was not good looking and on account of demand of Rs.50,000/- to purchase the land.

C) It is the case of the prosecution that PW-1 Sahebrao is father of deceased Mandabai. Deceased Mandabai was married to accused No.1/Appellant on 17th April, 2008. After marriage she was residing with the accused at Mauja Khambala. After one year of her marriage, she delivered a male child, namely, Bitty.

D) It is the case of the prosecution that all the accused used to beat and abuse Mandabai on

account that she was not good looking. Whenever deceased Mandabai was visiting house of PW-1 Sahebrao, she used to narrate the alleged ill-treatment by the accused. Deceased Mandabai had told to her father that accused were demanding Rs.50,000/- for purchasing the agricultural land. Sahebrao could not pay the amount of Rs.50,000/-. Therefore, the accused used to beat and abuse deceased Mandabai. Sahebrao had tried to convince the accused, but in vain.

E) On 22th May, 2011 i.e. Sunday, deceased Mandabai, her mother-in-law Indubai and her husband accused No.1 Sambhaji had been to village Wanjargaon for attending the marriage ceremony of daughter of Shobha. After marriage, Mandabai and her son Bittya stayed in the house of Sahebrao, and accused No.1 Sambhaji and accused No.3 Indubai had gone to village Khambala. Thereafter on 25th May, 2011 at about 4.00 to 5.00 p.m. accused No.1 Sambhaji had been to the house of Sahebrao on motorcycle. Accused No.1 Sambhaji in a heat of

anger took deceased Mandabai and deceased Bittya with him on motorcycle. Thereafter on 26th May, 2011 Sahebrao had been to the house of accused with luggage of his daughter Mandabai. That time Sahebrao did not find deceased Mandabai and her son deceased Bittya in the house of accused. Therefore, Sahebrao made inquiry with the accused but the accused or inmates in the house of accused, gave evasive answers. Thereupon Sahebrao took search of his daughter. On 27th May, 2011, in the evening he went to the police station Virgaon and gave missing report, Exhibit-27.

F) On the next day, Sahebrao was called in the police station. Sahebrao had been to the police station and then police took him to the well situated in the vicinity of village Ghaigaon. Said well was belonging to Santosh Bhusare. The other villagers were also present there. The dead bodies of deceased Mandabai and deceased Bittya were found in the well. Their bodies were taken out of the well. It was found that stone was tied

with the dead body and the dead body of deceased Bittyia was found tied with the dead body of Mandabai. There were injuries on the mouth of deceased Mandabai. The dead bodies were taken for post-mortem. After post-mortem examination, their funeral rites were performed. PW-1 Sahebrao thereafter gave report to the police station in respect of incident on 28th May, 2011. On the basis of his report, the offence under Crime No.23 of 2011 came to be registered against accused for the offences punishable under Sections 302, 201, 498-A, 323, 504, 506 read with 34 of the I.P. Code.

G) PW-10 Suryakant Kokane, A.P.I. carried out further investigation. On 28th May, 2011, during inquiry, he along with panchas and staff had gone to the well situated in the vicinity of Siddhapurwadi, Ghaigaon. He prepared spot panchnama Exhibit-31 in presence of panchas. He also prepared inquest panchnamas Exhibit-32 and 33 in respect of dead bodies of Mandabai and Bittyia.

He arrested the accused and prepared arrest panchnamas, Exhibit-52 to 55. On 30th May, 2011 while in police custody, accused No.1 Sambhaji has made statement that he would produce the motorcycle and then his statement was reduced into writing in the form of memorandum Exhibit-34. Motorcycle came to be recovered at the instance of accused No.1 vide Exhibit-35. A.P.I. Suryakant Kokane also sent letter to learned Judicial Magistrate, First Class, Vaijapur for recording statements of witnesses under Section 164 of the Code of Criminal Procedure and accordingly the statements of witnesses came to be recorded. A.P.I. Kokane collected post-mortem report and C.A. report. After completion of investigation, the investigating officer submitted the charge-sheet against accused in the Court of Judicial Magistrate, First Class, Vaijapur.

H) Since the offence punishable under Section 302 of I.P. Code is exclusively triable by the Court of Sessions, the case was committed to

the Court of Sessions for trial.

I) A charge for an offence punishable under Section 302, 201, 498-A read with 34 of the I.P. Code was framed against the accused and the same was explained to them. The accused pleaded not guilty and claimed to be tried, with the defence of denial.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted the accused No.1/ Appellant Sambhaji for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer imprisonment for life and to pay fine, as afore-stated. The trial Court also convicted the accused No.1/ Appellant Sambhaji for the offence punishable under Section 201 of the I.P. Code and sentenced him to suffer imprisonment for three years and to pay fine, as afore-stated. Hence this Appeal is preferred by the Appellant challenging the conviction and sentence.

5. Learned counsel appearing for the Appellant/accused No.1, referring to the written submissions placed on record, submits that the trial Court acquitted all the accused including Appellant for the offence punishable under Section 498-A of the I.P. Code and therefore motive to commit the offence is not proved. Learned counsel submits that motive in a case of circumstantial evidence, plays a vital role. In support of said submission, learned counsel placed reliance upon the ratio laid down in the case of Ashok s/o Sonaji Bedke vs. State of Maharashtra¹.

6. Learned counsel appearing for the Appellant further submitted that the evidence of PW-1 Sahebrao and PW-3 Kalavati is not consistent and reliable. She further submits that PW-3 Kalavati has not corroborated to the version of PW-4 Vasant and PW-7 Shobhabai. She further submits that PW-4 Vasant, for the first time on

¹ 2005 ALL M.R.(Cri) 965

29th May, 2011 stated that he had seen Mandabai and Bittyia in the company of Appellant on 25th May, 2011. She further submits that evidence of PW-4 Vasant, PW-7 Shobhabai and PW-8 Ajinkya on the point of 'last seen' is not consistent and the same cannot be relied upon. Learned counsel further submits that the prosecution case is based only upon circumstantial evidence and except 'last seen' no other circumstance is proved by the prosecution. She further submits that only on the basis of one circumstance of last seen, conviction is not proper. In support of said submission, learned counsel placed reliance upon the ratio laid down in the case of the State of Maharashtra vs. Balkrishna Mahadeo Lad², Kanhaiya Lal vs. State of Rajasthan³, Shyamlal Saha and another vs. State of West Bengal⁴ and in the case of Anjan Kumar Sarma vs. State of Assam⁵.

7. Learned counsel appearing for the

2 2014 ALL M.R.(Cri) 934

3 2014 ALL S.C.R. 1542

4 2014 ALL S.C.C. 1316

5 A.I.R. 2017 S.C. 2617.

Appellant further submitted that PW-9 Dr. Chaitain Tambe was unable to state as to whether death of Mandabai and Bitty was homicidal. She further submits that the prosecution has not brought on record the evidence regarding the time of death. There is no proximity in between the allegations of taking away of deceased and the death. Learned counsel, therefore submitted that the Appeal may be allowed.

8. The learned A.P.P. appearing for the State submitted that though the case of the prosecution is based on the circumstantial evidence, the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt by the prosecution. He further invites our attention to the evidence of PW-4 Vasant, PW-7 Shobhabai and PW-8 Ajinkya and submits that these prosecution witnesses have categorically stated that deceased Mandabai and Bitty were last seen in the company of the Appellant. He further submits that after

considering the entire evidence on record the trial Court has convicted the accused and the findings recorded by the trial Court are in consonance with the evidence brought on record. He, therefore submits that the Appeal may be dismissed.

9. The prosecution examined PW-9 Dr. Chaitain Bhagwan Tambe. He deposed that since 2007 he was working as Medical Officer at Sub District Hospital, Vaijapur. On 28th May, 2011, dead bodies of Manda Sambhaji Kolhe and Bittya Sambhaji Kolhe were brought by police for post-mortem examination at hospital. He has conducted the post-mortem examination on the dead body of Manda Sambhaji Kolhe. Dr. P.M. Kulkarni was also with him. Probable cause of death of Manda was "asphyxia due to drowning". Accordingly he has issued the post-mortem report Exhibit-45. He further deposed that he has conducted post-mortem examination on the dead body of Bittya Sambhaji Kolhe. Probable cause of death of Bittya was "asphyxia due to drowning".

Accordingly he has issued post-mortem report Exhibit-46. Both the bodies were identifiable. He was unable to state as to whether the death was homicidal.

. During the course of cross-examination, PW-9 Dr. Chaitain Thambe stated that in a case of persons committing suicide, they tie their hands or feet together or attach heavy weights to their person before jumping into water. Nylon bag was found around the neck and one hand of deceased Mandabai. He has not taken any photographs. He has not mentioned any description about the knot.

. Thus, it is clear from the evidence of PW-9 Dr. Chaitain that probable cause of death of Mandabai and Bitty was asphyxia due to drowning.

10. The prosecution examined PW-1 Sahebrao Murlidhar Gagare. He deposed that deceased Manda was his daughter. After marriage she was residing with accused at Mouja Khambala. After one year of

marriage she delivered male child. Thereafter all the accused used to beat and abuse Manda. Whenever the deceased was visiting his house, she used to narrate the ill-treatment of accused. She also told him that the accused were demanding Rs.50,000/ for purchasing agricultural land. But he could not pay the said amount. For non-payment of the said amount, the accused were beating, abusing the deceased. But he had not gone to convince them.

. PW-1 Sahebrao further deposed that about one and half year prior to the date of recording his evidence, there was marriage of his grand daughter at Wanjargaon. Deceased Manda, her husband, her mother-in-law, her son had also come there for marriage. After marriage his daughter and her son stayed in his house and accused No.1 and his mother had gone to Khambala. After two days accused No.1 had come to Wanjargaon. He was present in his field and accused No.1 took his daughter and gone to Khambala. He stated accused

No.1 to wait. On the next day he had gone to Khambala along with the luggage of his daughter. But his daughter was not present in the house of accused. He asked the accused about his daughter. But the accused had not given the answer properly. He took search of his daughter, but could not find her. Therefore, he returned to his house.

. PW-1 Sahebrao further deposed that on the next day he had gone to police station Virgaon and he had lodged the missing report Exhibit-27, of his daughter. Police called him on the next day. Therefore he had gone to police station. Police took him to the well at Mouja Ghaigaon. The said well belongs to Santosh Bhusari. His relatives and other villagers were also present there. Police told him that the dead body of his daughter is in the well. The dead body of his daughter was taken out of the well. Two stones were tied with the dead body. The dead body of his grand-son was also tied with his daughter. He had seen the dead bodies. There were injuries on the

mouth of Manda. Thereafter the dead bodies were sent for post-mortem examination. After post-mortem examination, their funeral rites were carried out. Thereafter he had gone to police station and lodged the report Exhibit-28. The police read over his report and obtained his thumb impression.

. During the course of his cross-examination, PW-1 Sahebrao stated that Khambala is at the distance of 20 K.M. from Wanjargaon. Taxi vehicles are available to go to Khambala from his village. He further stated how the marriage of her daughter Manda was settled. He stated that he had seen the house of accused No.1, his agricultural land and thereafter he gave consent for marriage. He further stated that Mandabai was educated upto 10th standard and the accused were intending to employ her as *Anganwadi* Teacher. He further stated that on 25th May, 2011, his daughter Manda was in his house. He himself, his wife, his son and others were with him working in the field. He had

seen that accused No.1 had come to his house. He felt necessary to inquire with the accused No.1 as to why accused No.1 was not ready to stay and why he was taking Manda in haste. On 26th May, 2011, he had gone to house of accused with clothes of his daughter at about 4.00 to 5.00 p.m. He inquired with the accused persons whether Manda had come to their house and they told that she did not come to their house. This witness was extensively cross-examined by the defence, but nothing useful to the defence has been elicited.

11. PW-2 Rajendra Sahebrao Dusingh is a panch to the spot panchnama Exhibit-31. He deposed that in his presence dead bodies were removed from the well. He is also panch to the seizure panchnama of motorcycle, which was hidden below the fodder and the same was seized at the instance of accused No.1.

12. The prosecution examined PW-3 Kalavati Sahebrao Gagare. She deposed that deceased Manda

was her daughter. Marriage of Manda was solemnized with accused No.1 on 17th April, 2008. After marriage she was residing with accused at Khambala. She further deposed about the alleged ill-treatment given to her daughter Manda and demand of Rs.50,000/- by the accused. She further deposed that accused No.1 is not tampered. She further deposed that on 22nd May, 2011 the deceased had come to Vanjargaon for marriage of her relative, along with accused No.1 and his mother. After the marriage, deceased along with her son had stayed in her house. Behind their back, accused No.1 took the deceased along with son with him to his village. Her grand-son Ajinkya told the said fact to her. On the next day morning her husband had gone to village Khambala with the clothes of Manda. He returned to house at about 10.00 p.m. and told that Manda and her son were not present in the house of accused and the accused were not answering properly. The dead bodies of deceased and her son were found in well at Sidhpurwadi Ghaigaon Shivar.

. During her cross-examination, PW-3 Kalavati stated that on 25th May, 2011 she along with her husband and son were together working in their field. Before arrival in house, they were not knowing the whereabouts of the deceased.

13. The prosecution has examined PW-4 Vasant Shridhar Kasar. He deposed that he knows the complainant and he was also knowing deceased Manda. He is resident of Vanjargaon, the village of the informant. He deposed that on 25th May, 2011, at about 5.00 to 5.30 p.m. he was returning from his field to his house on bullock-cart. He had seen that accused No.1, deceased Manda and Bitty were proceeding on their motorcycle. He said "Ramram" to accused No.1 and accused No.1 also replied in same manner. He was knowing accused No.1, the son-in-law of the informant. He further deposed that on 28th May, 2011, he came to know that the dead bodies of Mandabai and her son were lying in the well of Shidhapurwadi-Ghaigaon

Shivar.

. During the course of his cross-examination, PW-4 Vasant stated that on 29th May, 2011, at the time of recording his statement, he had stated to police for the first time that he had seen accused No.1 while proceeding with the deceased Manda and her son on motorcycle. He stated that the informant and his relatives were taking search of Manda since 25th May, 2011 till 28th May, 2011.

. Thus, PW-4 Vasant is a natural witness and the prosecution has brought on record through this witness that, when he was returning from his field in bullock-cart, at that time he had seen accused No.1/ Appellant proceeding on motorcycle along with deceased Manda and her son Bittya. Thus, deceased Manda and her son Bittya were last seen in the company of the Appellant.

14. PW-5 Kisan Haribhau Mote deposed that

deceased Manda was his sister in law. He deposed about the ill-treatment to Manda at the hands of accused. He further deposed that on 24th May, 2011 the deceased Manda had come to his house and she stayed in his house for one day. On 25th May, 2011 Manda had gone to Vanjargaon along with her son. On 25th May, 2011, his nephew Ajinkya met him and told that accused No.1 took Manda and her son and gone to his village. On 27th May, 2011 he came to know from one Eknath Gagare that Manda and her son were not present in her matrimonial house. During his cross-examination, he stated that on 22th May, 2011, he had gone to attend the marriage at Vanjargaon. After marriage his wife and he himself returned to their village. Vanjargaon is at the distance of 4 K.M. from Savkheda. On 26th May, 2011 he came to know that search of Manda was going on. He had also taken her search.

15. The prosecution examined PW-6 Balasaheb Sahebrao Gagare. He deposed that deceased Manda was his sister. She was married to accused No.1 on

17th April, 2008. He further deposed about the alleged ill-treatment to Manda and demand of Rs.50,000/- by the accused persons for purchasing agricultural land. He further deposed that on 22th May, 2011 the deceased had come to their village for the marriage of their relative. The deceased had stayed in their house along with her son for two days. After marriage accused Nos.1 and 3 left the village. On 25th May, 2011 accused No.1 at about 4.00 to 5.00 p.m. took the deceased with him behind their back. On the next day his father had gone to the house of accused along with the clothes of Manda, at that time deceased Manda was not present in the house of accused. On 28th May, 2011 the dead body of deceased along with her son was found in the well at Sidhapurwadi-Ghaigaon Shivar. PW-6 Balasaheb was extensively cross-examined by the defence, but nothing useful to the defence was elicited.

. Thus, prosecution has brought on record through the evidence of PW-1 Sahebrao that on 22nd

May, 2011 deceased Manda along with her son came to his house and stayed there. On 25th May, 2011 accused No.1 came to the house of PW-1 Sahebrao on motorcycle and took his wife Manda and son Bittya with him and left the house of Sahebrao. On 26th May, 2011 Sahebrao had gone to Khambala along with clothes of his daughter Manda, but Manda and her son Bittya were not there in the house of accused. Sahebrao inquired regarding whereabouts of Manda and Bittya but accused/Appellant gave evasive answers. Thereafter on 28th May, 2011 it was noticed that dead bodies of Manda and her son Bittya were lying in the well at Ghaigaon in the field of Santosh Bhusari. This version of PW-1 Sahebrao is corroborated by his wife PW-3 Kalawati and his son Balasaheb, on material particulars.

16. The prosecution examined PW-7 Shobhabai Ashok Choudhary, on the point of 'last seen'. She deposed that she was knowing deceased Mandabai. On 22th May, 2011 there was marriage of her daughter Priyanka. Deceased Manda, her son and accused

Nos.1 and his mother came to her village Vanjargaon for marriage. The deceased and her son stayed in the house of the informant. Accused No.1 and his mother returned to their village. She further deposed that after 2-3 days, at about 4.00 to 5.00 p.m. she was cleaning utensils in front of her house. The road is in front of her house. She had seen accused No.1, deceased and her son proceeding on motorcycle. She called accused No.1 for taking tea but accused said that he was in hurry and by saying so, accused had gone on his motorcycle.

. During the course of her cross-examination, PW-7 Shobhabai stated that from the next day when she had seen accused No.1 with deceased Manda, the search of Mandabai was started. On the day of recording her statement by police, she had stated the fact that she had seen accused No.1 with the deceased for the first time to the police. When the search of Manda was going on, she felt it necessary to inform the father of

Manda, her brothers and villagers that she had seen accused No.1 while proceeding with Manda with her son.

. Thus, PW-7 Shobhabai has categorically stated that two-three days after 22nd May, 2011, at about 4.00 to 5.00 p.m. when she was cleaning utensils in front of her house, she had seen accused No.1/Appellant proceeding on motorcycle along with deceased Manda and her son Bitty. Thus, through the evidence of this witness PW-7 Shobhabai, the prosecution has brought on record that on 25th May, 2011 deceased Manda and Bitty were last seen in the company of Appellant. During the course of her cross-examination by the defence, her evidence is not shattered.

17. PW-8 Ajinkya Vijay Dusing is a star witness of the prosecution case. He was about 16 years old at the time of recording his evidence before the trial Court. He deposed that he was taking education in 10th Standard. Deceased

Mandabai was his maternal aunt and Bitty was his cousin. Accused No.1 is his uncle. He deposed that on 25th May, 2011 he was present at Vanjargaon in the house of his maternal uncle. Deceased Mandabai and Bitty were also present there. At about 4.00 to 5.00 p.m. accused No.1 Sambhaji came to the house of his maternal uncle. At that time he was present in the house of his maternal uncle. Other persons in the house had gone to the field. Accused No.1 Sambhaji asked Mandabai to come with Sambhaji. He further deposed that he told accused to stay and he will call his grand-father and grand-mother. But accused No.1 refused to stay. Thereafter accused No.1 took Mandabai and Bitty and proceeded on his motorcycle. Thereafter his grand-father and grand-mother came to house. He told them that accused No.1 Sambhaji took Mandabai and Bitty with him. On the next day his grand-father Sahebrao took the bag of Mandabai to the house of accused No.1. Sahebrao returned to the house in the evening and told that Mandabai was not present in the house of accused No.1. His

statement was recorded by police. The J.M.F.C.,
Vaijapur also recorded his statement.

. During the course of his cross-examination, PW-8 Ajinkya stated that he is taking education in Sadhaguru Narayangiri Maharaj Vidyalaya. He is well in studies. He used to listen his grand-father, grand-mother and maternal uncle. On the day of recording his evidence, they all came to Court along with him. He further stated that till the recovery of dead body of Manda and Bittya nobody was taking their search. On 27th May, 2011 he learnt that dead bodies of Manda and Bittya were found. Thereafter only he disclosed that accused No.1 took Manda and Bittya on his motorcycle. On 25th May, 2011 and 26th May, 2011 nobody inquired with him as to where Manda and Bittya had gone. On 25th May, 2011 after two hours when accused No.1 took Manda and Bittya with him, grand-father, grand-mother and maternal uncle came to house. He was present in the house at that time. The house of his maternal uncle is situated

in the field. His grand-father, grand-mother and maternal uncle were working in the field.

. Thus, the prosecution has brought on record through the evidence of PW-8 Ajinkya that on 25th May, 2011 he was present at Vanjargaon in the house of his maternal uncle. Deceased Mandabai and Bittya were also present. At about 4.00 to 5.00 p.m. accused No.1/Appellant Sambhaji came to the house of maternal uncle of Ajinkya. At that time other family members had gone to the field and Ajinkya was present in the house alongwith Mandabai and Bittya. Thereafter Appellant took Mandabai and Bittya and proceeded on his motorcycle. PW-8 Ajinkya was extensively cross-examined by the defence but nothing useful to the defence has been elicited.

18. PW-10 Suryakant Devrao Kokane, P.S.I. Police Station, Virgaon is the Investigating Officer. He deposed about the manner in which he has carried out the investigation in the crime.

19. We have discussed in detail, the entire evidence brought on record by the prosecution. The prosecution case is that on 22nd May, 2011, deceased Mandabai along-with her son Bittyia went to the house of her father, Sahebrao. Thereafter on 25th May, 2011, at about 4.00 to 5.00 p.m. Appellant Sambhaji went to the house of Sahebrao on his motorcycle and took with him deceased Mandabai and Bittyia and proceeded towards his village. But on the way, the Appellant thrown Mandabai and Bittyia in the well situated in the agricultural field of one Santosh Bhusare, in the vicinity of village Ghaigaon, Taluka-Vaijapur. Admittedly, there is no eye witness or direct evidence in the present case and the prosecution case is entirely based upon circumstantial evidence. The prosecution, therefore relied upon the following circumstances:

(i) Appellant was last seen in the company of deceased Mandabai and

Bittyia,

(ii) Recovery of dead bodies at the instance of Appellant,

(iii) Recovery of motorcycle at the instance of Appellant pursuant to his statement under Section 27 of the Evidence Act,

(iv) Conduct of Appellant after the incident.

20. To prove the first circumstance of 'last seen' the prosecution examined PW-4 Vasant, PW-7 Shobhabai and PW-8 Ajinkya. The prosecution has brought on record through the evidence of PW-8 Ajinkya that on 25th May, 2011 when he was in the house of his maternal uncle, Appellant came there at about 4.00 to 5.00 p.m. and took with him Mandabai and Bittyia and left the house on his motorcycle. The prosecution has brought on record through the evidence of PW-7 Shobhabai that on 25th May, 2011, at about 4.00 to 5.00 p.m. when she was cleaning utensils in front of her house,

she had seen the Appellant, Mandabai and her son proceeding on motorcycle. The prosecution has brought on record through the evidence of PW-4 Vasant that on 25th May, 2011 at about 5.00 to 5.30 p.m. when he was returning from his field to his house on bullock-cart, he had seen the Appellant, deceased Mandabai and deceased Bitty were proceeding on the motorcycle. Thus, the prosecution has proved beyond reasonable doubt, that Mandabai and Bitty were last seen in the company of Appellant on 25th May, 2011 at about 4.00 to 5.30 p.m. Thereafter nobody has seen them alive. Thus, the prosecution has proved the first circumstance of 'last seen'.

21. So far as second circumstance of 'recovery of dead bodies at the instance of Appellant' and third circumstance, 'recovery of motorcycle at the instance of accused', the prosecution has brought on record through the evidence of PW-2 Rajendra that the dead bodies of Mandabai and Bitty were recovered from the well

at the instance of the Appellant and further the motorcycle was recovered at the instance of accused which was concealed below the fodder in the field. The Investigating Officer PW-10 Suryakant Kokane also stated in his evidence that dead bodies of Mandabai and Bittya were recovered from the well at the instance of Appellant and the motorcycle was also recovered at the instance of Appellant. Thus, the prosecution has proved the second and third circumstance.

22. So far as fourth circumstance i.e. 'conduct of the accused/Appellant after the incident' is concerned, the prosecution has proved the said circumstance through the evidence of PW-1 Sahebrao. On the next day of the incident, i.e. on 26th May, 2011 when Sahebrao visited the house of accused, Mandabai and Bittya were not present in the house of accused. When Sahebrao inquired regarding the whereabouts of Mandabai and Bittya, he gave evasive answers. Thus, though the case of the prosecution is based on the circumstantial

evidence, the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt by the prosecution.

23. In the facts and circumstances of the present case, the prosecution has proved beyond reasonable doubt, that Mandabai and Bittyia were last seen in the company of Appellant on 25th May, 2011 at about 4.00 to 5.30 p.m and thereafter nobody has seen them alive. Therefore the onus lies on the Appellant to explain what happened to Mandabai and Bittyia after they were last seen in the company of the Appellant. In this respect, the Appellant has not offered any explanation. The Supreme Court in the case of Deepak Chandrakant Patil vs. State of Maharashtra⁶, in Para-15 held thus:

"15. In the instant case, we are satisfied that the trial court and the High Court rightly appreciated the evidence on record and the circumstances proved against the

⁶ (2006) 10 S.C.C. 151

appellant conclusively prove his guilt. Mere fact that there is no evidence to show that he actually assaulted the deceased may not be of any consequence in the facts and circumstances of this case. We may only observe that in the face of the reliable evidence on record that the deceased had accompanied him at 10.30 p.m. on 29-12-1998, the accused-appellant did not offer any explanation as to whether they parted company thereafter. The fact that he knew about the dead body of the deceased lying in the garden behind the house of A-1 is almost clinching in nature and leaves nothing to doubt. Having considered the evidence on record, we are satisfied that there is no justification for interference with the order of conviction and the sentence imposed on the appellant. This appeal is, therefore, dismissed."

24. The Supreme Court in the case of Ashok vs. State of Maharashtra⁷, in Para-12 held thus:

"12. From the study of abovestated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of

⁷ (2015) 4 S.C.C. 393

proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

25. The Supreme Court in the case of Rohtash Kumar vs. State of Haryana⁸, in Para-34 held thus:

"34. Thus, the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very

8 (2013) 14 S.C.C. 434

strong presumption against him."

26. The trial Court has considered the entire evidence brought on record and observed in Para-56 of the impugned Judgment that, prosecution has succeeded in bringing home guilt to the accused No.1 for the offence of committing murder. It is established that accused No.1 had intention to cause death of his wife Manda and his son Bittya. He committed murder intentionally and knowingly causing the death of his wife Manda and son Bittya by throwing their dead bodies into the well and for hiding evidence. The trial Court has further observed that all the circumstances proved by the prosecution clinchingly established the culpability of accused No.1 and nobody else. These established circumstances wholly rule out any reasonable possibility of innocence of accused No.1 from any point of view in respect of the offence of murder. In other words, chain of other circumstantial evidence is so complete against accused No.1 as to rule out any other hypothesis

about his innocence. Prosecution has succeeded in bringing home guilt of accused No.1 for the offence of committing murder of his wife Manda and his son Bitty and for hiding evidence. The trial Court has convicted the Appellant/accused for the offence punishable under Section 302 and also under Section 201 of the I.P. Code and sentenced him, as afore-stated.

27. Learned counsel appearing for the Appellant submitted that PW-9 Dr. Chaitain Thambe deposed in his examination-in-chief that he cannot say as to whether the death was homicidal, and therefore she submits that the prosecution has not established that death of Mandabai and Bitty was homicidal.

28. While considering the point, whether prosecution proved that deceased Mandabai and Bitty met with homicidal death, the trial Court has observed that even upon the evidence presented at the trial it seems that two bodies of deceased

Mandabai and deceased Bittyia were taken out of the well situate in Gut No.188 in the vicinity of Ghaigaon Shivar in the agricultural land of Santosh Bhusare. This fact has not been seriously disputed. The trial Court further observed that, the evidence of Medical Officer Dr. Chaitain Thambe shows that he conducted the post-mortem on the dead bodies of Mandabai and Bittyia and as per the opinion of Medical Officer, cause of death of both the deceased was "asphyxia due to drowning". The trial Court further observed that death of Mandabai and Bittyia was unnatural and homicidal. The trial Court further observed that inquest panchnama mentions that there were some abrasions on the dead bodies and the dead body of Mandabai was found tied with stone by means of cotton sari and dead body of Bittyia was also found tied with the dead body of Mandabai by clothes. Thus, the trial Court after considering the evidence of Doctor Chaitain Thambe (PW-9) coupled with the contents of inquest panchnama and post-mortem report, held that the death of Mandabai and Bittyia

was homicidal. We have also independently perused the evidence of Medical Officer PW-9 Chaitain Thambe, inquest panchnamas and post-mortem reports of deceased Mandabai and Bittya, and find that the findings recorded by the trial Court are in consonance with the evidence brought on record and the prosecution has proved that death of Mandabai and Bittya was homicidal. Though specific opinion is not expressed by the Medical Officer that death was homicidal, nevertheless, he has stated the cause of death was "asphyxia due to drowning". The circumstances brought on record by the prosecution clearly suggests that death of Mandabai and Bittya was homicidal. The Supreme Court in the case of Machindra vs. Sajjan Galpha Rankhamb and others⁹ in Para-15 of the Judgment, held that:

"Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod,

9 2017(5) SCALE 70

inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution."

29. Learned counsel appearing for the Appellant submitted that the prosecution has not proved that the accused has committed an offence punishable under Section 498-A of the I.P. Code. Therefore, there is no any motive brought on record by the prosecution for commission of alleged offence by the Appellant. In this respect, it would be apt to make reference to the judgment of the Supreme Court in the case of *Mulakh Raj and others Vs. Satish Kumar and other*¹⁰ wherein in para 17 it is held, as under:

"17. The question then is, who is the author of the murder? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the

10 (1992) 3 SCC 43

evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. The question, therefore, is whether Satish Kumar alone committed the offence of murder of his wife? In this regard Sri Lalit pressed into service the evidence of DW 4, the uncle of the respondent who stated that respondent 1, his brother and father were in the shop at the relevant time and that the

respondent also stated so in his statement under section 313 C.P.C. This evidence clearly establishes that the respondent was not at home when the occurrence had taken place. This evidence has to be considered in the light of the attending circumstances and the conduct of Satish Kumar. It is established from the evidence that the deceased and the first respondent alone were living in the upstairs room. The occurrence took place in the broad day time in their bed room. The deceased at that time was having three months old child. What had happened to the child at the time when the ghastly occurrence had taken place is anybody's guess. Normally three months child would be in the lap of the mother unless somebody takes into his/her lap for play. It is not the case. It would be probable that after the murder, the child must have been taken out and the dead body was burnt after pouring kerosene and lighting fire. Therefore, the one who committed the offence must have removed the child later from the room. Admittedly the day of occurrence is a Sunday and that too in the afternoon. Therefore, the shops must have been closed. DW 2, Post Office Superintendent, examined by the defence, categorically admitted that the handwriting of all the four telegrams was

of the same person. Satish Kumar admitted that he issued two telegrams including the one to PW 15 and the two were issued by his father. Therefore, four telegrams were issued by respondent 1 alone. When the wife was practically charred to death an innocent and compassionate husband would be in a state of shock and would not move from the bedside of the deceased wife and others would attend to inform the relations. It is also his case that he phoned to the police station and informed of the occurrence. Evidence is other way about. An attempt was made to have the matter compromised, but failed. Thereafter they were found to be absconding. The evidence of DW 4 (maternal uncle) that respondent 1 was in the shop thus gets falsified and his is a perjured evidence. This false plea is a relevant circumstance which militates against his innocence. The death took place in the bedroom of the spouse and the attempt to destroy the evidence of murder by burning the dead body; the unnatural conduct of Satish Kumar, immediately after the occurrence; the false pleas of suicide and absence from house are telling material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that Satish

Kumar alone committed the ghastly offence of murder of his wife, Shashi Bala."

30. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and convicted the Appellant/ accused. The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

31. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

asb/JUL17