

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 89 OF 2014

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| <ol style="list-style-type: none"> 1. Ankush S/o Manohar Chapte,
Age : 40 years, Occ. Agri.
R/o: Gurnal, Taluka Deoni,
District Latur. 2. Vijay S/o. Waman Mane,
Age: 30 years, occ. Agri.,
R/o: Gurnal, Taluka Deoni,
District Latur. 3. Rasul Imamsab Sheikh,
Age : 35 years, Occ. Agri.
R/o: Gurnal, Taluka Deoni,
Distict Latur. 4. Fayaj Rahimoddin Sayed,
Age: 35 years, Occ: Agri.
R/o: Gurnal, Taluka Deoni,
District Latur. | <p>.. APPELLANTS
(Original
Accused)</p> |
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VERSUS

The State of Maharashtra	.. RESPONDENT
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Mr. Nilesh S. Ghanekar, Advocate for Appellants.
Mr. A.R. Kale, APP for Respondent – State.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 1st OCTOBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

The instant appeal calls-in-question the legality and propriety of impugned Judgment and order of conviction of the appellants-accused and resultant sentence rendered by the Additional Sessions Judge, Udgir, District Latur, in Sessions Case No. 59 of 2005 dated 22.01.2014. The appellants-accused were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and they all sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- each, in default, they have to suffer further rigorous imprisonment for six months.

2. The prosecution case sans unnecessary details in brief is that, the ill-fated deceased Ravis was the married son of first informant Bashir Saheb s/o. Ismail Saheb Sayyad resident of Gurnal village, Tahsil Devani, District Latur. The victim Ravis, his wife, sons and father-first informant Bashir Saheb all were residing jointly and eking livelihood by doing agricultural work. There was one vehicle-tractor with trolley purchased by deceased Ravis prior to 5/6 months of the incident. The appellant-accused No.1 Ankush Chapte was employed as a driver on the vehicle-tractor of the victim-Ravis. According to prosecution, on 13.10.2005, the deceased Ravis started proceeding towards Udgir Tahsil market with his vehicle-tractor trolley laden with the food grain bags of sunflower and soyabean grains for sale. The appellant-accused Ankush was driving the vehicle-tractor, whereas the appellant-accused Vijay Mane, Rasul Shaikh and appellant Fayaj Sayed were also accompanied with deceased Ravis in vehicle-tractor. The appellant-accused Rasul was the mason and he had undertaken the work of construction of house of one Vasant Joshi in the village. It has been alleged that the house owner-Vasant Joshi asked the mason-appellant Rasul and accused Ankush, driver of the tractor, to bring building material like bricks, wooden door frame etc. from Udgir. He had also paid Rs.2,000/- to the appellant Rasul for purchase of building material. Accordingly, the deceased Ravis left the home on 13.10.2005 accompanied with rest of the appellants-accused for going to Udgir market place, unaware of his tragic end on that day. It has been alleged that at about 8:00 p.m. the accused-Vijay alone brought the vehicle-tractor at the house of deceased. The father Bashirsab

Sayyad made enquiry with accused-Vijay about the whereabouts of his son-deceased Ravis. The appellant-accused Vijay informed him that his son Ravis remained stayed at Udgir. The father also visited to the house of accused-Ankush in the night hours for enquiry of his son Ravis. But, the accused-Ankush also disclosed that his son Ravis halted at Udgir for bringing the seeds and fertilizers. However, on the following day, there was gossip in the village about dead body of person lying in the field. He immediately rushed to the place of crime and saw that the dead body was of his son Ravis. There were marks of injuries on his person. Thereafter, the father Bashirsab filed the report for penal action against the miscreants.

3. Pursuant to First Information Report (FIR), the Police of Devani Police Station, District Latur registered the Crime No. 60 of 2005 under Section 302 of the IPC and set the penal law in motion. Investigating Officer (IO) visited to the spot of incident and drawn the Panchnama of scene of occurrence. After inquest panchnama, dead body was escorted to Government Hospital for autopsy. IO recorded statement of witnesses acquainted with the facts of the case. IO apprehended the appellants-accused for the sake of investigation. The clothes of the appellants-accused, the blood stained chips of wooden frame etc. were impounded during the course of investigation. The seized muddemal was referred to Chemical Analyser for analysis. The IO collected relevant documents of post-mortem report, C.A. report etc. After completion of investigation, the IO preferred charge-sheet against the appellants-accused bearing Sessions Case No.59 of 2005.

4. The learned Sessions Judge proceeded to frame the charge against appellants-accused, to which they pleaded not guilty and claimed for trial. In order to bring home guilt of the accused, prosecution examined in all 17 witnesses in this case. The learned trial Court recorded statement of each of the accused as prescribed under Section 313 of Cr.P.C. After hearing both sides, learned trial Court considered the oral and circumstantial evidence adduced on record and held all the appellants-accused guilty for the offence punishable under Sections 302 read with Section 34 of the IPC. Accordingly, the learned trial Court passed impugned Judgment and order of conviction of appellants-accused and imposed the resultant sentence as indicated above. The validity and propriety of the impugned Judgment and order of conviction and resultant sentence awarded by the learned trial Court is the subject matter of present appeal.

5. Learned counsel Mr. Ghanekar appearing for appellants-accused vehemently submits that the impugned Judgment and order of conviction and resultant sentence rendered by the Additional Sessions Judge is totally illegal, perverse and bad-in-law. The learned trial Court did not appreciate the evidence on record in its proper perspective. The appellants-accused did not commit any kind of offence as alleged on behalf of prosecution. They all are innocent of the charges of murder of victim- Ravis pitted against them. The appellant-accused are falsely implicated in this case. According to learned counsel, there are material discrepancies in the evidence of prosecution witnesses. All the witnesses are interested and partisan witnesses. There are no any independent witness available to support the prosecution case. The

material witness PW-11 Ramesh and PW-14 Jainnodin Shaikh turned hostile. Learned counsel for appellants-accused submits that, the conclusion drawn by the learned trial Court is totally based on surmises and conjunctures. There is no cogent and consistent evidence available on record to prove that the deceased Ravis at the relevant time was accompanied with appellants prior to his death. He has also given much more emphasis that if the appellants-accused failed to give explanation about the circumstances in which deceased Ravis died, it does not *per-se* be taken to mean that the appellants-accused are responsible for his death. According to learned counsel Shri Ghanekar, the prosecution cannot take recourse of provision of Section 106 of the Evidence Act in this case. The evidence of recovery of weapon tommy Under Section 27 of the Evidence Act or CA report, all are of no use for the prosecution. The learned counsel raised the objection that there was no proper sealing of properties at the time of its seizure. Therefore relevant CA report cannot be relied upon in favour of prosecution. The learned counsel added that there are circumstances on record that deceased Ravis was not with the accused when they started returning to village from Udgir, but he stayed in Udgir for his work. The appellants-accused cannot be held guilty on the basis of weak theory of last seen together of deceased Ravis with accused. The learned counsel fervidly contends that the prosecution failed to establish complete chain of incriminating circumstances to bring home guilt of the appellant-accused.

6. The learned counsel for the appellant-accused placed his reliance on the judicial precedents in the cases - *Mangu Singh Vs. Dharmendra*

and Anr. reported in LEX (SC) 2015 12 45, Musheer Khan Alias Badshah Khan Vs. State of Madhya Pradesh reported in LEX (SC) 2010 1 70, Krishna Govind Patil Vs. State of Maharashtra reported in AIR 1963 SC 1413, Sawal Das Vs. State of Bihar reported in Air 1974 SC 778, Sukumaran Vs. State reported in AIR 2019 SC 1389, Sahib Singh Vs. State of Punjab reported in AIR 1997 SC 2417, Trimukh Maroti Kirkan Vs. State of Maharashtra reported in LEX (SC) 2006 10 90, Salim Akhtar Vs. State of Uttar Pradesh reported in AIR 2003 SC 4076, Kiran Ashok Jadhav Vs. The State of Maharashtra reported in 2014 ALL MR (Cri.) 3850, Ashish Jain and Ors. Vs. Makrand Singh and Ors. reported in AIR 2019 SC 546, Balu Sambhaji Shinde Vs. The State of Maharashtra reported in 2002 (104(1)) BOMLR 257, Rafiq Hayachand Role Vs. State of Maharashtra reported in 2014 (1) Bom CR (Cri) 377, Satyawar and others Vs. The State of Maharashtra and Ors. reported in 2015 ALLMR (Cri) 1347, Arvind Dayaram Choure and anr. Vs. State of Maharashtra reported in 2003 ALL MR (Cri) 45, Subramaniam Vs. State of Tamil Nadu and Anr. reported in 2009 ALL MR (Cri) 2118 (S.C.), Murlidhar and others Vs. State of Rajasthan reported in AIR 2005 SC 2345, Ramanna Vs. State of Maharashtra reported in 2003(6) Criminal CC 542 and Ramesh s/o Shankar Dhotre Vs. State of Maharashtra reported in 2010 (10) LJSOFT (URC) 1.

7. Per contra, learned APP appearing on behalf of respondent - State raised the objection and opposed the contentions propounded on behalf of appellants-accused. He submits that the learned trial Court appreciated the entire circumstances on record in proper manner and held the appellants-accused guilty for offence of murder of victim -

Ravis. The prosecution has proved the circumstances that since morning on 13-10-2005, the victim – Ravis was in the company of accused. The PW6 – Bashirsab, father of deceased, deposed about the same. PW9-Abbas Ajgar Ali was the brother-in-law of deceased Ravis. He stated that on 13-10-2005, at about 3.00 to 3.15 p.m., his brother-in-law Ravis accompanied with appellants-accused came to him with vehicle tractor-trolley. He was with them till evening and at about 6.00 to 6.15 p.m, the victim Ravis and appellants-accused started returning to their village Gurnal. He went to see off them upto Railway gate in Udgir town. According to learned prosecutor, the victim Ravis was accompanied with the appellants-accused in the vehicle tractor - trolley. But, he did not reach to home and on the following day his dead body was found lying in the field located on the road leading to village Gurnal. The learned APP submits that in view of Section 106 of the Evidence Act, it was obligatory for the appellants-accused to explain the cause of death of deceased – Ravis. But, they failed to give proper explanation for homicidal death of deceased- Ravis. He has also given much more emphasis on the circumstance of last seen together of deceased Ravis with appellants-accused. The learned prosecutor also explained the other circumstantial evidence on record for recovery of weapon under Section 27 of the Evidence Act, C.A. report, etc.

8. Learned APP appearing for the State of Maharashtra placed his reliance on the Judgments in *State of Punjab Vs. Karnail Singh* reported in 2003 AIR (SC) 3609, *State of West Bengal Vs. Mir Mohammad Omar* reported in 2000 AIR SC 2988, *Joshinder Yadav Vs. State of Bihar* reported in 2014 AIR (SC) 1043, *State of Rajasthan Vs. Thakur Singh*

reported in *2014 (12) SCC 211, State of Maharashtra & another Vs. Gajanan Chintaman Ruikar and another* reported in *2005 (1) Bom.C.R. (Cri.) 292, Chaman and Anr. Vs. State of Uttaranchal* reported in *2009 AIR (SC) 1036, Rohtash Kumar Vs. State of Haryana* reported in *2013 AIR (SC) (Cri) 1544, Rajendra Pralhadrao Wasnik Vs. The State of Maharashtra* reported in *2012 AIR (SC) (Cri) 731, State of Rajasthan Vs. Kashi Ram* reported in *2007 AIR (SC) 144, State of A.P. Vs. S.Rayappa and ors.* reported in *2006 AIR (SC) 3709 and Ganesh Lal Vs. State of Rajasthan* reported in *2002 SCC (Cri) 247.*

9. The intense scrutiny of the evidence adduced on record on behalf of prosecution reveals that the entire edifice of the prosecution case rests on the circumstantial evidence. There is no eye witness of the alleged incident of murder of deceased-Ravis by the appellants-accused. The prosecution, primarily, kept implicit reliance on the following incriminating circumstances to bring home the guilt of the accused.

- (i) The victim - Ravis met with an homicidal death.
- (ii) The victim - Ravis on 13-10-2005 at about 10.00 to 11.00 A.M. left the house with the vehicle- tractor-trolley for sale of bags of food grains of sunflower and soybean in the market at Udgir town.
- (iii) The appellants-accused were accompanied with victim - Ravis in the tractor-trolley for going to Udgir Tahsil market place.
- (iv) The appellant-accused Ankush was employed as driver on the vehicle of deceased - Ravis and on the day of incident i.e. 13-10-2005, he was driving the vehicle.

- (v) The appellants-accused and victim – Ravis were at Udgir town for entire day on 13-10-2005.
- (vi) In the evening at about 6.00 to 6.30 p.m. the victim - Ravis accompanied with appellant- accused started returning to village Gurnal from Udgir – town in his vehicle tractor-trolley.
- (vii) In the night at about 8.00 8.30 p.m. the appellants - Rasul and Ankush unloaded the building material of PW-2 Shri Joshi at his house.
- (viii) Thereafter, the appellant-accused Vijay brought the vehicle tractor to the house of victim - Ravis. He parked the vehicle and handed over the key of vehicle to the son of deceased– Ravis.
- (ix) The PW6- father Bashirsab made enquiry about the whereabouts of son deceased-Ravis, but, the appellants Vijay and Ankush gave evasive answers.
- (x) Thereafter, on the following day the dead body of deceased-Ravis discovered laying in the field with injury marks.
- (xi) The events occurred with victim Ravis on 13-10- 2005 since 6.00 to 6.30 p.m. till 8.00 to 8.30 p.m. were especially within the knowledge of appellants-accused.
- (xii) There was no plausible explanation put-forth on behalf of appellants-accused about the missing of victim – Ravis from their company while returning to village in vehicle – tractor-trolley on 13-10-2005.

10. At this juncture, it would profitable to make a reference of legal guidelines delineated by Honourable Apex Court in the case of *Musheer Khan Alias Badshah Khan Vs. State of M.P. [Lex (SC)2010, 170]* in which, it has been observed that while appreciating the circumstantial

evidence the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances. It was held that the facts alleged on the basis of any legal inference from circumstantial evidence must be proved beyond any reasonable doubt. It must create a complete chain of circumstances, which would lead to inescapable inference of guilt of the accused. The circumstances must be consistent with the guilt of the accused and inconsistent with their innocence.

11. In the instant case, the issue of homicidal death of deceased – Ravis was not seriously put in controversy on behalf of appellants-accused. PW4-Dr. Deonikar conducted the autopsy on the mortal remains of deceased-Ravis. He had observed lacerated wound on left partial region as well as two cut wounds on left partial and mid-line inter-partial region. According to medical experts, all these injuries were anti-mortem in nature. He had also noticed serious internal injuries under the scalp. He opined that the death of deceased Ravis was caused following serious injuries to his brain. PW4-Dr. Deonikar issued post mortem findings (Exhibit-49). It was also not denied that the dead body of the victim-Ravis was recovered from the field of one Shri Kaknale located on the road leading from Devni village to Gurnal village. The spot panchnama (Exhibit-43) reflects all these circumstances. PW 6- Bashirsab, PW7-Shaikh Mujeeb, son of deceased both stated about recovery of dead body of victim – Ravis from the field. Therefore, in view of all these circumstances, there is no impediment to draw the inference that the victim -Ravis met with an homicidal death.

12. Now, the crucial issue to be ponder over in this matter is in regard to nexus and proximity of the appellants-accused with the alleged homicidal death of deceased - Ravis. According to prosecution, the appellants - accused are the author of fatal injuries sustained to victim - Ravis and they are only the culprit responsible for his death.

13. PW-6 Bashirsab, father of deceased - Ravis deposed that on 13-10-2005 his son victim - Ravis left the house for going to Udgir market place to sell the bags of food-grains of Sunflower and Soyabean. The appellant - Ankush was employed as driver on the vehicle - tractor-trolley of victim - Ravis. PW-6 Bashirsab further testified that appellant No. 2-Vijay, Appellant No. 3-Rasul and appellant No. 4-Fayaj were also accompanied with his son victim - Ravis for going to Udgir town in the vehicle-tractor-trolley. It has brought on record that in the night hours at about 8.00 p.m. appellant-accused - Vijay brought the vehicle - tractor -trolley at the house of victim-Ravis. He parked the Vehicle and given its keys and one Tommy to Mujib - son of victim - Ravis. The grandson-Mujib made enquiry about whereabouts of his father victim-Ravis, that time appellant - Vijay disclosed that he stayed at Udgir. Thereafter, PW-6 Bashirsab visited to the house of accused No. 1 - Ankush for enquiry about his son victim-Ravis. He had also disclosed the similar fact that his son Ravis halted at Udgir for bringing the seeds and fertilizers. However, on following day, he came to know that there was dead body of person lying in the agricultural land of one Mr. Baswant Kaknale near road. He immediately rushed to the spot and saw the dead body. It was the dead body of his son - Ravis. There were injury marks on the dead

body of deceased Ravis. Thereafter, he filed the FIR (Exhibit-62).

14. PW-7 – Sheikh Mujib son of Ravis stepped into the shoe of his grandfather PW-6 Bashirsab and deposed the similar circumstances, resulting into death of his father victim – Ravis. PW-2 Vasant Joshi testified that work of construction of toilet at his house was going on and the appellant - Rasul had undertaken the work of toilet being mason. According to PW-2 Joshi, on 13-10-2005, he asked the accused- Rasool and driver-accused Ankush to bring some building material i.e. bricks, wooden door frame, toilet pot, etc. in the vehicle- tractor-trolley of driver Ankush from market place at Udgir. He had also paid Rs.2000/- to accused Rasul for purchasing the building material. Accordingly, on 13-10-2005 in the night at about 9.30 p.m. accused-Rasul and accused-Ankush brought the building material purchased from Udgir to his house. They kept building material near the septic tank of his house and thereafter went away. On the following day i.e. 14-10-2005, when he returned to home in the evening that time Police arrived at his house and made enquiry about the accused. The Police taken search of bricks and wooden door frame. There were red colour stains on the wooden door frame. Police seized the same under panchnama.

15. PW-9 Sayyad Abbas Sayyad Ajgar Ali is the brother in-law of deceased-Ravis. He deposed that on 13-10-2005 at about 3.00 to 3.15 p.m. his brother-in-law Ravis as well as appellants-Ankush, Vijay and Fayaz all came to his workshop in vehicle -tractor– trolley. The victim - Ravis wanted to do some welding work of vehicle – tractor – trolley. Accused – Rasul also came at the workshop of PW-9 Sayyad Abbas and

disclosed to deceased -Ravis that he has to carry some bricks, door frame and toilet pot etc. to village Gurnal. Thereafter, victim - Ravis told accused Vijay, Ankush to go with accused Fayaz and Rasul with tractor – trolley. The deceased-Ravis remained at the workshop of PW-9 Sayyad Abbas. At about 5.00 to 5.15 p.m., the appellants - Vijay, Ankush, Fayaz and Rasul all returned to his workshop in a vehicle tractor-trolley laden with building material. The appellants – Ankush, Vijay and Fayaz all came in an inebriated state. Thereafter, at about 6.00 to 6.45 p.m. victim – Ravis, appellants - accused – Ankush, Vijay, Fayaz and Rasul all started proceeding towards village Gurnal in tractor-trolley. PW-9 Sayyad Abbas had been with them upto railway gate to see off them. However, on the following day at about 11.00 to 11. 30 a.m., PW-9 Sayyad Abbas received the information about death of his brother-in-law, deceased Ravis. Thereafter, he immediately rushed to the hospital and saw the dead body.

16. The prosecution adduced evidence of PW-12 Shrikant Deshmukh and PW-13 Ram Konale the food-grains merchants. They stated about the visit of victim-Ravis to their shops for selling bags of Soyabean. There were 5/6 persons accompanied with him. PW-12 Deshmukh recognized the appellant - Ankush as driver of the tractor trolley of victim – Ravis. PW-13 Ram Konale added the fact that he know the accused - Ankush being driver of deceased - Ravis. He also deposed that victim – Ravis came to his shop for selling Soyabean grains.

17. The evidence of these prosecution witnesses categorically established that the victim – Ravis on 13-10-2005 at about 10.00 to 11.00 a.m. left the house with vehicle - tractor trolley for selling food-

grains of Sunflower and Soyabean in the market yard of Udgir. The appellants-accused were with him. Accused-Ankush was driver on the vehicle-tractor-trolley at the relevant time. The victim – Ravis and appellants – accused all were at Udgir town for entire day uptill evening hours on 13-10-2005. The accused-Rasul, Ankush and Vijay indulged in purchase of building material of PW-2 Mr. Joshi in the market at Udgir. The food-grain merchants PW-12 Mr. Deshmukh and PW-13 Mr. Ram Konale recognized accused-Ankush visited to their shop on 13-10-2005 with victim – Ravis for selling Soyabean food-grains. These circumstances adumbrate that victim - Ravis was in the company of appellants-accused on 13-10-2005 uptil evening hours. PW-9 Sayyad Abbas, brother-in-law of the deceased - Ravis manifestly made it clear that the accused on 13-10-2005 arrived at his workshop. The appellants-accused purchased some building material from market at Udgir. He added that when the appellants-accused returned to his workshop, that time, they were in inebriated state. Thereafter, at about 6.00 to 6.30 p.m. they all started returning to their village Gurnal in the vehicle-tractor-trolley laden with building material of PW-2 Mr. Joshi. PW-9 Sayyad Abbas had witnessed the appellants - accused and his brother-in-law-Ravis proceeding in the tractor-trolley towards village Gurnal. These circumstances proved by prosecution demonstrate that the accused were last seen together in the company of deceased-Ravis during the relevant time of incident occurred on 13-10-2005.

18. It has also brought on record that in the night hours on 13-10-2005 victim - Ravis did not return to home. Accused - Vijay

brought the vehicle – tractor-trolley at the house of deceased-Ravis. He parked the vehicle-tractor-trolley and handed-over the keys to PW-7 Mujib son of deceased -Ravis. On enquiry, accused - Vijay disclosed that deceased Ravis stayed at Udgir for his work. PW-6 Bashirsab also immediately visited to the house of driver – accused - Ankush for enquiry of deceased-Ravis. But, he had also disclosed the similar fact to PW-6 Bashirsab that victim -Ravis halted at Udgir for purchasing seeds and fertilizers. Unfortunately, on following day, hapless father and son received information about dead body lying in the field located on the road leading to village Gurnal. They both rushed to the spot of incident and saw the dead body of deceased - Ravis. PW-2 Mr. Joshi also stated about arrival of accused - Rasul and driver - Ankush at his house with vehicle-tractor-trolley for unloading the building material purchased by them in market place at Udgir. The appellants-accused Ankush and Rasul kept the building material near the septic tank of his house and went away. These circumstances would sufficient to point out that the deceased-Ravis was found missing while travelling accompanied with the appellants-accused in the tractor-trolley en-route to village Gurnal from Udgir town.

19. As per evidence of PW-9 Sayyad Abbas, deceased Ravis started returning to home in his vehicle-tractor trolley accompanied with accused. But, he did not reach to home. Obviously, he was in the company of accused, and therefore, events occurred with the victim - Ravis during the period since 6.00 to 6.30 p.m. after leaving Udgir town till his missing from the vehicle – tractor-trolley, would have been especially within the knowledge of appellants – accused. Therefore, it

was reasonable expectation that appellants-accused should disclose the details of incident occurred with the deceased-Ravis, resulting into his death. But, appellants-accused did not give any details about the incident and maintained silence. This conduct and demeanour of appellants-accused appears suspicious and doubtful one. Therefore, the learned trial Court was constrained to draw adverse inference against the appellants-accused for commission of murder of deceased - Ravis.

20. The learned counsel for appellant harped on the circumstances that one or two appellants-accused must have occupied the seat on the wheel and driver seat of the tractor and rest of the appellants would have made to sit in the trolley of tractor. In case, any untoward incident occurred in the trolley of the tractor, the driver of the tractor or accused occupied seat on the wheels of tractor would not receive opportunity to participate in the incident of assault and therefore, the appellants-accused can not be convicted, by taking recourse of Section 34 of IPC for constructive liability. He relied upon the observations of Their Lordships of Apex Court in the case of ***Krishna Govind Patil Versus State of Maharashtra (Supra)***. We are not in agreement with the arguments canvassed on behalf of learned counsel for appellants. The factual aspects of the matter-in-hand and circumstances revealed from the aforesaid judicial precedents are distinguishable and not akin to each other. It is the rule of law that the common intention as envisaged under Section 34 of IPC implied a pre-arranged plan and criminal act was done pursuant to the pre-arranged plan. The said plan may develop on the spot during the course of

commission of offence, but, the plan must precede the act of constituting the offence. Therefore, prior to convict the accused under Section 34 of IPC, it is incumbent on the Court to find out whether the concerned person had a prior concert with one or more other persons.

21. In the matter-in-hand, all the appellants and victim- Ravis were travelling in the tractor-trolley for returning to their village. It has not made clear that who was driving the vehicle at the relevant time. It has brought on record that the accused Ankush was employed as driver on the vehicle tractor. The accused Ankush and Rasul both had been to the house of PW-2 Shri. Joshi, with vehicle tractor-trolley laden with his building material. Both the accused in the night around 9.00 p.m. on 13-10-2005 unloaded the building material, and thereafter, the accused- Vijay took the vehicle-tractor to the house of victim – Ravis. He parked the tractor-trolley at the house of deceased Ravis and given its keys to the son- PW-7 Mujib. It was not certain that whether accused Ankush or Vijay or anybody else was driving the vehicle at the relevant time of incident. Moreover, the blood stain was detected on the wooden door frame kept in the trolley of tractor. Therefore, the inference can be drawn that the alleged incident resulting into inflicting fatal head injuries to victim – Ravis must have occurred in trolley of the tractor. Thereafter, the dead body of victim – Ravis was carried from tractor-trolley up-to the spot in the field of Shri. Kankale. These attending circumstances adumbrates pre-plan, pre-concert amongst all accused, and thereafter, the crime came to be committed. In such peculiar circumstances, the conviction of the accused by invoking Section 34 of IPC appears to be justifiable and valid one.

22. The learned APP has rightly gave stress on the circumstances of last- seen together theory. The Honourable Apex Court time and again reiterated that the doctrine of "last-seen together" shifts the burden of proof on the accused, requiring them to explain how the incident occurred and failure to give plausible explanation, would give rise to a very strong presumption against them. The learned APP also given much more emphasis on the provisions of Section 106 of the Evidence Act.

23. As referred above, prosecution has established that victim- Ravis, on 13-10-2005, since morning hours was in the company of appellants-accused for visiting to market place at Udgir town. It has also proved that the appellant – Rasul accompanied with accused- Ankush and Vijay purchased the required building material of PW-2 Shri. Joshi. The victim- Ravis, his driver, accused – Ankush also visited to the shops of food grain merchants PW-12 Shri. Deshmukh and PW-13 Shri. Ram. The PW-9 Sayad Abbas was with brother-in-law – victim Ravis and appellants since 3.00 to 3.15 p.m. Thereafter, according to PW-9 Sayyad Abbas, the accused and his brother-in-law, at about 6.00 to 6.30 p.m. started proceeding towards the village Gurnal in tractor-trolley. He had seen the accused with the victim – Ravis in the vehicle tractor-trolley, lastly when he had been with them to see off upto railway gate. It is manifestly clear that the accused and victim- Ravis all were traveling in the vehicle tractor-trolley for returning to their village Gurnal. They all left the Udgir town for returning to village at about 6.00 to 6.30 p.m. Thereafter, the accused- Rasul and Ankush unloaded the building material of PW-2 Shri. Joshi at his house in the

night at about 8.30 to 9.00 p.m. The accused – Vijay took the vehicle tractor to the house of deceased Ravis and after it's parking, handed over its keys to the PW-7 Mujib, son of deceased Ravis. The accused-Vijay visited to the house of deceased in the night at about 8.00 to 8.30 p.m. These circumstances indicate that the alleged incident must have occurred with the deceased Ravis in between the period 6.30 p.m. to 8.00 p.m. on 13-10-2005 and at the relevant time, he was travelling with accused in the tractor-trolley. In such circumstances, it becomes obligatory for the appellants-accused to explain as to how, where and in what manner the deceased – Ravis parted company with them. This is on the settled principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances, in which they parted company. In the instant case, there was no such explanation on the part of accused to discharge their burden.

24. The Honourable Apex Court, in the case of State of Rajasthan Versus Kashi Ram (2007 AIR (SC) 144) in paragraph 24 observed as under :-

"It is not necessary to multiply with authorities. The principle is well settled. The provisions of [Section 106](#) of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he 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 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. The principle has been succinctly stated in *Re. Naina Mohd. AIR 1960 Madras, 218.*"*

25. The learned counsel Shri. Ghanekar for appellants made endeavour to draw the attention of this court towards some legal infirmities in the prosecution case about the sealing of properties of crime at the time of it's seizure, the mode and manner of recording statement of accused under Section 313 of Code of Criminal Procedure, 1973, as well as recovery of articles under Section 27 of the Evidence Act. We do not find it justifiable to give much more importance to all these factual aspects being not sufficient to damage the prosecution case. We would like to reiterate that the prosecution succeeded to establish the complete chain of incriminating circumstances for inescapable inference of guilt of the accused, other than these corroborative circumstances. Therefore, there is no propriety to appreciate all these circumstances, which would not cause any impairment in the edifice of prosecution case.

26. In the above premises, we are of the considered opinion that the conclusion drawn by the learned trial Court for conviction of the appellants-accused and resultant sentences imposed on the accused in this case appears to be just, proper and reasonable one. There is no perversity or error in the findings expressed by the learned trial Court. In contrast, inference drawn by the learned trial Court for death of deceased- Ravis is required to be made confirm and absolute. Hence, there is no propriety to cause any interference in the findings of learned trial Court at the behest of appellants-accused. Therefore, present appeal being devoid of merit deserves to be dismissed. Accordingly, the Criminal Appeal stands dismissed. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

MTK