

Ingale

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

CRIMINAL APPEAL NO. 331 OF 2016

Ambaji @ Nana Hanmant Patil
Age 51 years, Occ. Agriculturist
R/o. At & Post Kololi,
Taluka Panhala,
District Kolhapur,
(Presently lodged at Kolhapur Central
Prison, Kolhapur)

.. Appellant

V/s.

The State of Maharashtra
(vide C.R.No. 106 of 2014 registered
at Panhala Police Station, Kolhapur)

.. Respondent

Mr. Bhavesh Parmar a/w Mr.Vivekand Akshali i/b Ms.Devmani
Shukla, for the Appellant.
Mr.F.R.Shaikh, APP for the Respondent – State.

**CORAM : S.S.SHINDE, J. &
M.S.KARNIK, J.**

DATE : JULY 29, 2020

JUDGMENT (PER M.S.KARNIK, J.) :-

1. The challenge in this Appeal is to the judgment dated 30th March 2016 of the Additional Sessions Judge, Kolhapur convicting the accused – appellant for an offence punishable under section 302 of Indian Penal Code (hereinafter referred to as

'IPC' for short) and sentencing him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for two months.

2. C.R. No. 106 of 2014 which was registered in Panhala police station was investigated by I.O. Shri Yashwant Namdev Gavari who deposed as P.W.13. FIR is registered at Exhibit 25 lodged by P.W.1 - Kiran Maskar. The date of the incident is 17th September 2014. The place of the incident is alleged to be the house of the appellant. On the date of the incident, in the morning at about 7.00 a.m., deceased Ganpati Dattu Jadhav, maternal uncle of P.W.1 - Kiran Maskar, left home after having a cup of tea. At about 12.30 p.m., P.W.1 - Kiran was proceeding for his work towards Kolhapur . He noticed his uncle Ganpati and accused Ambaji Patil talking in front of Ambaji's house. At about 4.30 p.m., P.W.1 - Kiran received a phone call from Shri Bajirao Dagadu Jadhav - P.W.8, the husband of Police Patil Mrs. Shubhangi Jadhav. P.W.8 - Bajirao informed P.W.1 of Ambaji telling him that P.W.1's maternal uncle Ganpati is lying in a pool of blood in Ambaji's house. P.W.8 - Bajirao therefore asked P.W.1 - Kiran to come to the spot immediately.

3. Thereafter P.W.1 - Kiran made a phone call to Dr.

Mansing Jadhav - P.W.5 - also a resident of the same village and narrated the information given by Bajirao and requested him to reach the spot. When P.W.1 - Kiran reached the spot at about 5.45 p.m., several villagers had gathered in front of Ambaji's house. Ganpati was lying on the floor in Ambaji's house in a pool of blood. P.W.1 noticed Ganpati had injuries on his forehead and head. P.W.1 also noticed one wooden batten lying there. P.W.1 then went to Panhala police station and lodged report against the accused Ambaji Patil. P.W.1 informed police that it is with the wooden batten his uncle was assaulted by Ambaji and killed. Even before P.W.1 - Kiran returned from Panhala police station, the police had arrived at the spot of the incident.

4. The investigation thereafter proceeded. The Investigating Officer - P.W.13- Yashwant Gavari testified that on 17th September 2014 at 6.30 p.m, he made entry in the station diary and went to the scene of offence. He prepared the spot panchanama at Exhibit 34. The body of the deceased Ganpati was lying in the house of accused - Ambaji. At the time of drawing panchanama, Investigating Officer seized all articles lying there. All articles were sealed separately and labels were affixed.

5. Though the appellant - accused was present at the scene of the incident, the Investigating Officer did not arrest him immediately as the accused was required to be admitted to the hospital for some medical condition. The accused was arrested on 26th September 2014 after receiving the report about medical condition of his health. The charge-sheet was filed after completing the investigation.

6. The appellant - accused pleaded not guilty. The accused raised a plea of alibi. The appellant - accused has submitted written arguments at Exhibit 86 stating that : "on the date of the incident, he proceeded towards his field at 10.00 a.m.. Thereafter he was in the field till 5.00 p.m. After returning from the field, he learnt that Ganpati fell on the ground at Kololi phata. The villagers were discussing that there was one rickshaw in front of the house. Ganpati was assaulted by somebody else. The house where the incident occurred is not owned by him but it is owned by relative of one Shri Mengane. The appellant - accused is falsely implicated in the case".

7. The prosecution examined as many as 13 witnesses. The trial Court convicted the appellant. With the assistance of learned Counsel for the appellant and learned APP, we have gone

through the evidence on record and also the findings recorded by the trial Court. There is no serious challenge to the finding that death of Ganapati is homicidal.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANT

8. That prosecution case is based totally on circumstantial evidence. The trial Court was not justified in rendering conviction on the basis of last seen theory. Two witnesses P.W.1 & P.W.7, who have deposed that the deceased was seen in the company of accused are closely related to the deceased and hence are interested witnesses. It is unsafe to rely upon their testimony. The other witness relied upon by the prosecution in support of the theory of last seen viz. P.W.5 deposed that his statement is not recorded correctly. The duration of time gap between the point of time when the accused and deceased were last seen alive and the deceased was found dead is not so small to be a basis for conviction of the appellant. Even otherwise the circumstance of last seen together can be considered as one of the circumstance and in any event there is no other evidence to complete the chain of circumstances which would lead to the conclusion of the guilt of the accused.

09. The house where the body of the deceased is alleged to have been found does not belong to the appellant. When a specific defence is taken as to the ownership of the house, then the prosecution ought to have led evidence to establish that this house belongs to the appellant- accused.

10. Heavy reliance is placed on the evidence of P.W.5- Dr.Mansing Jadhav who deposed that in the afternoon, he himself, deceased Ganpati, accused Ambaji and Ajit Yadav who accompanied him came out of the house of Ambaji and all of them proceeded in different directions. It is the deposition of P.W.5 - Dr.Mansing, that appellant - Ambaji proceeded towards village Kololi and Ganpati proceeded towards Kotoli. P.W.5 deposed that there was one rickshaw in the porch on one side of the house and two persons were standing near the rickshaw. This is an important factor in favour of the appellant that establishes that appellant and deceased parted company. The theory of last seen together must therefore fail.

11. P.W.7 - Sharada deposed that on the date of the incident, she herself, Sonali Patil and Suvarna Patil had gone to the field. However, prosecution failed to cross examine Sonali Patil and Suvarna Patil. The document at Exhibit 45 which was a pursis presented by prosecution states that these two witnesses

viz. Suvarna Patil and Sonali Patil be discharged as these witnesses are not supporting the prosecution. Non-examination of these two witnesses shakes the credibility of the evidence led by P.W.7- Sharada as her evidence remains uncorroborated. The evidence of P.W.1 – Kiran Maskar, who is the nephew of deceased Ganpati should not be relied upon, as apart from P.W.1 being an interested witness, P.W.1's cross examination would reveal that the story of P.W.1 that on his way to Kolhapur, he noticed accused & deceased talking in front of the house of accused is cooked up only to falsely implicate the accused by creating a proof for establishing the circumstance of last seen to secure conviction. The possibility of a false implication cannot be ruled out.

12. Shri Ajit Yadav had been to the house of Ambaji along with P.W.5. The statement of Ajit Yadav was recorded under section 164 of Cr.P.C. For failure of the prosecution to examine Ajit Yadav, an adverse inference needs to be drawn against the prosecution.

13. Nothing turns on the evidence of P.W.8 - Bajirao Dagadu Jadhav. He only deposed that when appellant – accused came to P.W.8 - Bajirao's shop at 4.30 p.m., he mentioned that

deceased Ganpati has fallen down in his house. The forensic report at Exhibit 79 would reveal that the same is inconclusive and therefore it would be unsafe to infer that the blood stains on the clothes of the person of the appellant are those of deceased Ganpati. The written submission at Exhibit 86 states that the appellant - accused was in his field from 10.00 a.m. onward. He had come home between 1.30 p.m. and 2.00 p.m. to get lunch for labourers working in the field. It is only when he came back home from his agricultural field at 5.00 p.m., he came to know from the villagers that deceased Ganpati had fallen down near village Kololi phata. The house where the incident occurred does not belong to the appellant - accused and in fact belongs to the relative of one Mengane. The defence of the appellant is probable and that the same needs to be accepted. The prosecution has failed to prove its case beyond reasonable doubt. Considering the quality of the evidence, it is highly unsafe to base the conviction on the only circumstance of last seen together which circumstance also cannot be said to be free from doubt. The Appellant deserves to be acquitted.

SUBMISSIONS OF LEARNED APP for STATE

14. Learned APP for the State invited our attention

to the material portions of the evidence and also the findings recorded by the trial Court. He would submit that at least three witnesses – P.W.1, P.W.5, P.W.7 have deposed that the appellant – accused was last seen in the company of deceased Ganpati. The evidence of P.W.1 and P.W.7 is consistent and nothing is elicited in the cross examination to shake the credibility of the witnesses. He would submit that even the evidence of P.W.5 & P.W.8 is consistent with the prosecution case on material aspects. He would further submit that the statement of P.W.5 – Dr. Mansing Jadhav was recorded under section 164 of Cr.P.C. P.W.5 tried to support the defence to some extent by deposing that the appellant – accused and deceased parted company in his presence. This is obviously with a view to help the accused. Learned APP would however submit that the circumstance that the dead body was found in the house of the appellant is incriminating. Learned APP would submit that the plea of alibi runs counter to the evidence of P.W.5 – Dr.Jadhav who attempted to support the defence by deposing that the appellant and the deceased parted company in his presence and of P.W.5 and Shri Ajit Yadav. He would further submit that report regarding blood group though inconclusive, forensic report on record clearly reveals that human blood is found on the banian and pant of the appellant – accused. Even the evidence of Medical Officer is

consistent with the prosecution case. He would thus submit that all the circumstances leading to the guilt of the accused form a chain so complete that it is consistent with the hypothesis of guilt of the accused. The accused has failed to offer an explanation as to how and when he parted company and instead the appellant - accused took a plea of alibi. The accused further has not offered any explanation as to the presence of the dead body in his house. He would further submit that in the present case, last seen theory comes into play, as the time gap between the point of time when the accused and deceased were last seen alive and the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

CONSIDERATION

15. The incident in question took place on 17th September 2014. P.W.1 - Kiran Maskar - nephew of deceased Ganpati deposed that deceased Ganpati is his maternal uncle. When P.W.1 was proceeding for his work towards Kolhapur at about 12.30 p.m., he noticed deceased Ganpati and accused Ambaji - P.W.1 talking in front of the house of accused - Ambaji. P.W.1 received a call at 4.30 p.m. from P.W.8 - Bajirao Jadhav on

his mobile. P.W.8 - Bajirao informed P.W.1- Kiran that accused Ambaji told him about Ganpati lying in a pool of blood in his house. Kiran made a phone call to P.W.5 - Dr.Mansing narrating what Bajirao told him and requested him to go to the spot. P.W.5 - Dr.Mansing informed P.W.1 that he had visited house of Ambaji at 2.00 p.m. and at that time, Ambaji and Ganpati were drinking liquor. Kiran returned to village Kololi at 5.45 p.m. when he found several villagers gathered in front of house of appellant - Ambaji. Kiran saw his maternal uncle - Ganapati was lying on the floor. He was lying dead in a pool of blood. Kiran noticed injuries on Ganpati's forehead and head. He also saw one wooden batten lying there. In his cross examination, he admitted that deceased Ganpati was addicted to liquor and he was drinking liquor heavily. A suggestion was put to Kiran that as Ganpati was addicted to liquor and that Kiran was not giving money to him, it is for this reason P.W. 1 - Kiran and deceased Ganpati had dispute and quarrel which suggestion Kiran denied. Nothing is elicited in the cross examination which discredits the testimony of P.W.1 - Kiran. The testimony of P.W.1 - Kiran cannot be discarded merely because he is related to the deceased as the same is otherwise trustworthy and is corroborated by the testimony of other witnesses viz. P.W.5, P.W.7 & P.W.8 on material aspects.

16. P.W.7 - Sharada is the wife of deceased Ganpati. It is in her deposition that on the date of incident, she was proceeding towards her field. She had seen accused - Ambaji and her husband - deceased Ganpati talking near Ambaji's house. She asked her husband to have lunch from the tiffin kept in the shed of the field. At around 5.00'o clock, when P.W.7 returned home from the agricultural field, she was informed by one Shri Mahesh Patil that her husband Ganpati is lying in a pool of blood in the house of Ambaji. She admitted in her cross examination that her husband was drinking liquor during intervals. Though she admitted in her cross examination that Sonali Patil and Suvarna Patil were with her when she had gone to the field, non-examination of Sonali Patil or Suvarna Patil by the prosecution would not be sufficient to discard the testimony of P.W.7 if otherwise the evidence of P.W.7 is found to be trustworthy. The prosecution had by pursis dated 19th December 2015 stated that Suvarna Patil and Sonali Patil are not supporting the case of the prosecution and hence they may be discharged. It is the choice of the prosecution, which witnesses are to be examined and which not from the list of witnesses. This by itself is not sufficient to discard the testimony of P.W.7 as we find that the testimony of P.W.7 is consistent with the testimony of P.W.1, P.W.5 that appellant was seen in company of deceased.

17. Further, evidence of P.W.1 and P.W.7 that they had seen the appellant with the deceased is corroborated by evidence of P.W.5. P.W.5 in his evidence stated that around 1.45 p.m., he received a phone call from the appellant saying that he has some work and therefore he should come to the house of the appellant. P.W.5 states that at around 2.10 p.m., he went to the house of the appellant along with Ajit Yadav when he noticed the appellant and deceased drinking liquor together. It is the evidence of P.W.5 that he was present in the house of Ambaji for 5 - 7 minutes. P.W.5 stated that in the evening, he received a phone call from P.W.1 - Kiran asking him to go to the house of Ambaji as deceased Ganapati had sustained some injuries. P.W.5 then went on to state that he went to the house of Ambaji where a crowd had gathered. P.W.5 then says that he did not enter the house and went away to his dispensary. P.W.5 further denied the suggestion that he entered the house and noticed dead body of Ganapati. At this stage, Public Prosecutor requested permission to put leading questions to P.W.5 under section 154 of the Evidence Act which was granted and also permission under section 162 (1) of Cr.PC. to contradict the witness in the manner provided under section 145 of the Evidence Act was granted.

P.W.5 denied the suggestion that when he entered

the house, he had seen that the accused was also present there. He admitted that his statements were recorded twice, once by the police and other statement was recorded by Judicial Magistrate First Class, Panhala under section 164 of Cr.P.C. He admitted that the statement was recorded by the Magistrate. He states that it is the same and it bears his signature. Further he admitted that the contents are correct. He denied the suggestion about being told that Ambaji Patil murdered Ganapati by giving blows of wooden batten on the head of Ganapati. He further denied the suggestion about noticing the dead body of Ganapati lying in front room of the house and that the said body was having injuries on the head. He further denied having noticed the shirt of Ambaji. He also denied to have noticed any blood stains on pant and banian of Ambaji. P.W.5 denied the suggestion of having noticed a wooden batten lying on the floor. P.W.5 admitted that his family is having influence in politics. He however denied the suggestion that he is deposing falsely to help the accused for giving political favour. He denied the suggestion that in order to help the accused, he is saying that he did not notice the accused on that day.

18. In the cross examination, P.W.5 says that when he visited the house of Ambaji in the afternoon, after finishing

the talk, all four came out of the house. P.W.5 says that thereafter, appellant- Ambaji proceeded towards Kololi and Ganapati proceeded towards Kotoli in his presence. P.W.1 deposed that there was one rickshaw in the porch at one side of the house and two persons were standing near that rickshaw. In re-examination, P.W.5 admitted that he has not stated before the Magistrate or Police that after finishing his talk, all four came out of the house and Ambaji proceeded towards Kololi and Ganapati proceeded towards Kotoli for purchasing turban and about the rickshaw that was parked at one side of the house with two persons standing by its side. He further admitted that he had not stated before the Magistrate or Police regarding the presence of rickshaw. He denied the suggestion of having stated before the Police that when he reached the house of appellant- Ambaji, he entered in the house and noticed that body of Ganapati lying in the front room and Ambaji was present there having blood stained clothes. This version which he denied is marked as 'A' in the statement recorded by the police and was read over to P.W.5. He denied the suggestion that he improved his story to help the accused.

Upon analyzing the evidence of P.W.5, it is not possible for us to accept the contention of learned Counsel for

the appellant that the theory of last seen together by prosecution would fail in view of the deposition of P.W.5 that he had seen the appellant parting company with the deceased Ganapati. The evidence of P.W.1 and P.W.7 finds corroboration from the evidence of P.W.5 as to the factum of the appellant and deceased seen together in each others company. It is not possible for us to believe P.W.5 when he says that he saw the appellant and deceased parting company. P.W.5 says that when he went to the house of accused in the afternoon at around 2.10 p.m., the appellant and accused were drinking liquor. Further P.W.5 was in the house of the appellant for 5-10 minutes. P.W.5 was confronted by the prosecution with the statement which was recorded under section 164 of Cr.P.C. We do not find this version of P.W.5 believable as the appellant has not offered any explanation as to how and when he parted company. On the contrary, the appellant has raised the plea of alibi. The appellant has not offered any explanation as to when and how he parted the company of deceased Ganapati. The appellant has also failed to offer any explanation about the dead body of Ganapati which is found in his house. We therefore have no hesitation in holding that the appellant has not discharged the onus cast upon him by section 106 of the Evidence Act.

19. We would now consider the evidence of P.W.8 - Bajirao. P.W.8 says that the appellant Ambaji came to his shop on 17th September 2014 at 4.30 p.m.. Ambaji was wearing white banian and pant. Ambaji told him that Ganapati had fallen down in his house and requested P.W.8 to come with him. The banian of Ambaji was stained. P.W.8 then went to the house of Ambaji. He further says that from the gap of the door, he came to know that Ganapati was lying in the pool of blood. He then made a phone call to P.W.1 - Kiran Maskar and to the police station. P.W.8 admitted that he made a phone call to Kiran at 4.30 p.m.. He deposed that he made the first call to Kiran at 4.30 p.m. He further stated that when Ambaji came to his shop that time his clothes were blood-stained. He further stated that he noticed that the wooden batten was lying on the floor. We find that nothing is elicited by the defence in the cross examination of P.W.8 to discredit his testimony. Thus, the version of P.W.1 that he received a phone call from P.W.8 that deceased Ganapati was lying in the injured condition in the house of appellant - accused stands corroborated. Further it is seen from the deposition of P.W.8 that the appellant had visited the shop of P.W.8 having blood stained clothes.

20. Learned Counsel for the appellant was at pains

to point out that the house where the body of deceased was found does not belong to Ambaji. In this context, we may refer to the document placed on record at Exhibit 70 which is the House Assessment extract of the house where dead body was lying. This extract shows that Sheetal Ambaji Patil- the wife of the appellant is the owner of the property and in occupation. Even the evidence of P.W.5 clearly reveals that when Ambaji spoke to him on phone, Ambaji asked him to come to his house for some work, P.W.5 then went to the place of incident which is this very house. There is thus sufficient material on record to indicate that the house belongs to Ambaji and that he was in possession and in occupation of the said house.

21. Having regard to the consistent testimony of P.W.5, P.W.1 and P.W.7 the circumstance of deceased last seen in the company of appellant is established by the prosecution. The evidence on record indicates that till 2.20 p.m., the deceased was in the company of accused. The blood samples of accused were sent for chemical analysis and at Exhibit 82 is the Alcohol Examination Certificate indicating result of the analysis. The result indicates that blood contained 0.060 (sixty mgs) per cent W/V of Ethyl Alcohol. The evidence of P.W.5 that accused was drinking liquor in company of deceased finds corroboration from

this report.

22. From the medical evidence, following injuries are noticed :

External Injuries :

1. CLW 9x3x2 cm, on right temporal region oblique placed. Dark brownish blood from wound and around wound.
2. CLW 7x3x2 on right side of forehead above eyebrow stained with brownish blood.
3. CLW 3x2x1 on lower lip on left side, which was stained with brownish blood.
4. Left upper eyelid bluish contusion. Face, neck were extensively stained with dark brownish blood.

Internal injuries :

1. Dark extensively spread haematoma on right temporal region.
2. Right temporal bone depressed fracture 3 inch.
3. Large SDH upto 70-100 cc- dark blood in right temporal region. Extensive hemorrhagic right temporal cerebral contusions. Brain was congested, and also there was extensive haemorrhagic right temporo parietal cerebral contusion.

23. P.W.11 - Dr.Pravin Ganpatrao Naik, who

performed the post- mortem of the dead body deposed that the injuries on the person of deceased are in the ordinary course of nature sufficient to cause death. He further deposed that such injuries are possible by muddemal article 4 i.e. wooden batten. The post-mortem report is at Exhibit 52 and the probable cause of death is mentioned as head injury. Even the wooden batten seized from the scene of the offence is found to be stained with human blood.

24. The forensic report indicated that human blood is found on the clothes of the accused. The result of the analysis of the forensic laboratory is at Exhibit 79. The medical evidence is consistent with the prosecution case. P.W.11 - Dr. Pravin Ganpatrao Naik deposed that the injuries on the person deceased in the ordinary course of nature are sufficient to cause death. He further deposed that such type of injuries are possible by the said muddemal article No.4 wooden batten which is shown to him. The evidence of P.W.11 inspires confidence and there is nothing material elicited in his cross examination to discredit the testimony of the witness P.W.11.

25. From the evidence on record, the prosecution has succeeded in establishing that dead body was found in the

house of the appellant. The death occurred around 4.30 p.m. P.W.8 does not bear any animosity towards the appellant. P.W.5 deposed that he had seen Ambaji and deceased drinking liquor at 2.20 p.m. It has come in the evidence of P.W.8 that the appellant Ambaji had come to his shop at around 4.30 p.m. asking him to accompany Ambaji as Ganapati has fallen down in his house. Thus, the time gap between point of time when the accused and deceased were last seen alive and deceased is found dead is so small that possibility of any person other than accused being the author of the crime is completely ruled out. A stray admission of P.W.5 that a rickshaw parked with two persons standing beside it near the porch of house of Ambaji cannot enure to the appellant's advantage, in the light of the attendant circumstances indicated hereinbefore which only point to the guilt of the Appellant.

26. The Apex Court has held in the case of ¹**Ram Reddy Rajesh Khanna Reddy Vs. State of Andhra Pradesh** & in the case of ²**Hatti Singh Vs. State of Haryana** that last seen theory comes into play when the time gap between the point of time when the accused and deceased were last seen alive and the deceased is found dead is so small that the

¹ AIR 2006 SC 1656

² (2007)12 SCC 471

possibility of any person other than the accused being the author of the crime becomes impossible. It is held that even in such cases the Court should look for some corroboration.

27. In the present case, there is clinching evidence on record that the appellant was last seen in the company of deceased at 2.20 p.m. P.W.8 - Bajirao deposed that at 4.30 p.m. the appellant informed him that the deceased was lying with injuries in his house. P.W.8 noticed blood stained clothes of the person of appellant. The forensic report reveals that blood found on the clothes of the appellant is human. That the dead body of Ganapati found in a pool of blood in the house of the appellant is an incriminating circumstance. The evidence of P.W.1 - Kiran is consistent with the version of P.W.8 - Barjirao. P.W.5 Dr. Mansing Jadhav deposed that the appellant and the deceased were drinking liquor at around 2.10 p.m. on the date of the incident. Ganapati died around 4.30 p.m. The time gap between the point of time when the accused and deceased were last seen alive and the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. The dead body of the deceased Ganpati was found in the house of appellant - Ambaji. The appellant has failed to offer an explanation as to how and when the appellant

parted company with Ganpati. The prosecution has convincingly proved that the deceased was last seen in the company of the accused before his death and thereafter nobody saw him. Further the prosecution proved that the dead body of the accused was found in the house of accused. Therefore, the appellant - accused was legally obliged to discharge the onus shifted upon him to explain how the dead body was found in his house and under what circumstances deceased died homicidal death. It was open for the accused to discharge the said onus by preponderance of probabilities, however instead of doing it, the accused took a false plea of alibi, which he failed to prove.

28. In this view of the matter, though the case rests on the circumstantial evidence, we have no hesitation in holding that the circumstances on which the prosecution relies is consistent with the sole hypothesis of the guilt of the accused. Even medical evidence on record is consistent with the prosecution case. The evidence of P.W.1 and P.W.7 stands corroborated with the evidence of P.W.5 and P.W. 8 on material aspects. P.W.5 and P.W.8 are independent witnesses. Merely because P.W.1 and P.W.7 are closely related to the deceased Ganapati is no ground to discard their testimony as we find that their evidence is otherwise trustworthy and credible and find

corroboration from the testimony of P.W.5 and P.W.8.

29. Learned counsel for the appellant argued that the prosecution has failed to establish the motive and therefore, it is fatal to the prosecution case. It is his submission that the present case being completely based on the circumstantial evidence, failure to prove the motive breaks the link in the chain of the circumstances connecting the appellant with the crime. We are not persuaded by this submission of learned counsel. The Apex Court in the case of ³**Mulakh Raj Etc Vs.Satish Kumar and others** in paragraph 17 has held that undoubtedly in cases of circumstantial evidence 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. This proposition of law is reiterated by the Apex Court in

3 AIR 1992 SC 1175

the case of ⁴**Rohtash vs State Of Haryana & Another.** A profitable reference can also be made to the decision of the ⁵**Atley vs State Of Uttar Pradesh** in which case Their Lordships held that where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. The absence of proof of motive has this effect, only that the other evidence bearing on the guilt of the accused has to be very closely examined.

30. Let us now advert to the plea of alibi raised by the appellant. The burden of proving alibi undoubtedly lies on the accused for setting up the defence. Nonetheless, the law is well settled by the dictum of the Apex Court in ⁶**Gurucharan Singh V/s. State of Punjab** that even if the accused sets up the plea of alibi in his defence, the burden of proving the case against the accused is on the prosecution irrespective whether or not the accused has made out a plausible defence. It is equally well settled that the standard of proof which is required with regard to the plea of alibi must be the same as the standard

4 2013 AIR SCW 3208.

5 AIR 1955 SC 807

6 AIR 1956 SC 460

which is applied to the prosecution evidence and in both cases it should be a reasonable standard. This position is illuminatingly stated by Their Lordships in the case of ⁷**Mohinder Singh Vs. The State**. We are equally conscious that the weakness or falsity of an alibi is not sufficient ground for holding that the case of the prosecution is thereby improved. We find that no evidence whatsoever has been adduced in support of the plea of alibi taken up by the appellant. We therefore have no hesitation in coming to the conclusion that the appellant – accused has failed to establish the plea of alibi.

31. We, therefore, are of the opinion that the prosecution has discharged its burden in proving that the accused was present at the scene and participated in the crime in view of the following circumstances which we summarise in brief :

(i) From the evidence of P.W.5 – Dr.Jadhav, it is established that the appellant was last seen in the company of the accused till 2.20 p.m. on 17th September 2014.

(ii) The evidence that P.W.5 was in the company of deceased is corroborated by the evidence of P.W.1 – Kiran and P.W.7 – Sharada.

⁷ AIR 1953 SC 415

(iii) P.W.8 deposed about the appellant coming to his shop at 4.30 p.m. informing him that Ganapati was lying injured in his house.

(iv) P.W8 noticed the clothes of the appellant having blood stains. The forensic evidence reveals that the blood on the clothes of the appellant is human blood.

(v) The appellant has not offered any explanation much less probable and satisfactory explanation as to when he parted company with the deceased. He had raised a defence of alibi which appellant could not establish.

(vi) The dead body of Ganapati is found in a pool of blood in the appellant's house. The appellant has failed to offer any explanation much less probable and satisfactory explanation as regards the presence of dead body of Ganapati in his house.

(vii) The time gap between the point of time when the accused and deceased last seen alive and deceased is found dead is so small that possibility of any person other than the accused being the author of the crime is impossible.

(viii) The Medical Officer has deposed that injuries on the person of the deceased are possible by the wooden batten which was seized from the house of the appellant. The

wooden batten was stained with blood. The forensic report established that the blood on the wooden batten is human.

(ix) No explanation has been offered by the appellant when he was examined under section 313 of Cr.P.C. with respect to the incriminating circumstances appearing against him.

32. We have also gone through the judgment of the trial Court. The trial Court has analyzed the evidence in minute detail. We do not see any error in the reasoning of the Trial Court. The findings of guilt of the appellant recorded by the Trial Court are in consonance with the evidence on record and there is no perversity as such. Therefore, present Appeal fails.

33. The Appeal stands dismissed.

34. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)