

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 726 OF 2015**

Krishna Mahadev Chavan,
Age about 29 years,
Occupation : Manson, Resident of
Randullabad, Taluka : Koregaon,
Dist. Satara
at present Kolhapur Central Prison,
District : Kolhapur 416 007.Appellant

Versus

The State of Maharashtra
through Pusegaon Police Station,
Sessions Case No. 9/2014,
Taluka : Khatav, Dist. SataraRespondent

Mr.Aashish Satpute, Advocate appointed by Court for appellant.
Mr.S.R. Agarkar, APP for respondent-State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.
Reserved for Judgment on : 15th December 2020.
Judgment Pronounced on : 12th February 2021.**

JUDGMENT (PER N.J. JAMADAR, J.)

1. This appeal takes exception to the judgment and order dated 23rd April 2015 in Sessions Case No.9/2014 passed by the learned Additional Sessions Judge, Vaduj, whereby the accused-appellant came to be convicted for the offence punishable under section 302 of the Indian Penal Code, 1860 ('the Penal Code') and sentenced to suffer imprisonment for life and

pay a fine of Rs.1,000/- with default stipulation, for having committed murder of his wife Sunita alias Sunanda ('the deceased').

2. Shorn of superfluities, the indictment against the accused runs as under :-

(i) The deceased Sunita alias Sunanda was the daughter of Sau. Krishnabai Pawar (PW.5), the first informant, who resides at Beghar Vasti, Khatgun, Taluka Khatav, District Satara. The marriage of the deceased was solemnized with the accused who is a resident of Randullabad, Taluka Koregaon, District Satara. After marriage, the deceased joined the accused at her matrimonial home at Randullabad. The marital life of the deceased was, however, afflicted with discord. The accused suspected the fidelity of the deceased. The accused harassed and ill-treated the deceased on the said count. Efforts were made to resolve the marital discord. In pursuance thereof, the deceased and the accused shifted to Beghar Vasti, Village Khatgun, Taluka Khatav. They erected a temporary shed adjacent to the house of the first informant. The accused and deceased desired to erect a shed with a thatched roof.

(ii) On 5th May 2013, at about 9.00 a.m., the accused and the deceased went to the field known as 'Kolki', Khatgun, to collect a wooden log to support the thatched roof. The accused and the deceased carried a sickle and water bottle. At noon, the first informant, went to the said field to graze goats. The first informant noticed that the deceased was lying near a mango tree. The clothes of the deceased were stained with blood. A broken sickle and blade with blood stains thereon were lying thereat. The first informant found that there were incised wounds on the wrist and left side of the throat of the deceased. The first informant, however, did not find the accused in the vicinity of the said spot. The first informant, thus, realized that the accused had done the deceased to death as he suspected the character of the deceased. Hence, the first informant lodged report with Pusegaon Police Station.

3. Crime was registered at C.R.No.45/2013 for the offence punishable under section 302 of the Penal Code. The investigating officer visited the scene of occurrence. Inquest on the body of the deceased was held. The

scene of occurrence panchnama was drawn and the incriminating articles were seized thereunder. The dead body was sent for post-mortem examination. The deceased was then carrying six months pregnancy. The occurrence resulted in the death of quick unborn child as well. The investigating officer interrogated the witnesses and recorded their statements. The accused came to be arrested. The accused made discovery leading to the recovery of the clothes which he wore at the time of occurrence. After finding the complicity of the accused, report under section 173 of the Code of Criminal Procedure, 1973 ('the Code') was lodged in the court of jurisdictional Magistrate.

4. Upon committal, the learned Additional Sessions Judge, Vaduj framed charge against the accused for the offences punishable under section 302 and 316 of the Penal Code. The accused pleaded not guilty and claimed for trial.

5. At the trial, to substantiate the indictment against the accused, the prosecution examined 11 witnesses, including Sau.Krishnabai Bhanudas Pawar (PW5), the first informant, Dharam Changdev Pawar (PW-6), a cousin of the deceased, Mrs.Sushila Rajan Pawar (PW-9), a neighbour of the first informant, who claimed to have last seen the deceased in the company of the accused, Dr.Sau.Meghana Pandurang Patil (PW-8), the Autopsy Surgeon, Dayanand Ramdas Shirke (PW-7), the landholder in

whose field the accused had allegedly concealed the clothes which he wore at the time of the occurrence, and Dhananjay Vitthal Pingale (PW-11), the then A.P.I, Pusegaon Police Station, who furnished the details of investigation.

6. After the closure of the prosecution case, the accused was examined under section 313 of the Code. The accused did not lead any evidence in his defence which consisted of false implication.

7. After evaluation of the evidence and material on record, the learned Additional Sessions Judge was persuaded to enter a finding that the accused committed murder of the deceased. In the opinion of the learned Additional Sessions Judge, the prosecution succeeded in establishing the chain of circumstances which unerringly points to the guilt of the accused. The proved marital discord furnished the motive for the crime. The learned Additional Sessions Judge, however, held that the prosecution did not succeed in establishing the guilt of the accused for the offence punishable under section 316 of the Penal Code. Thus, the accused came to be convicted for the offence punishable under section 302 of the Penal Code and sentenced, as indicated above.

8. Being aggrieved by and dissatisfied with the impugned judgment of conviction and sentence, the accused preferred this appeal.

9. We have heard Mr. Aashish Satpute, the learned counsel, who was

appointed by the Court to espouse the cause of the appellant, and Mr.S.R. Agarkar, the learned APP at length. With the assistance of the learned counsels, we have carefully perused the evidence and material on record.

10. Mr. Satpute, the learned counsel for the appellant mounted a multi-pronged challenge to the impugned judgment. First and foremost, according to Mr.Satpute, the learned Additional Sessions Judge committed a grave error in arriving at the conclusion that the prosecution succeeded in establishing the homicidal nature of the death. In the light of the medical evidence and the attendant circumstances, the homicidal nature of the death cannot be said to have been established beyond the pale of controversy. This finding on the nature of the death vitiated the entire approach of the learned Additional Sessions Judge, urged Mr. Satpute. Secondly, the circumstance of the last seen was given undue weightage by the learned Additional Sessions Judge. In the circumstances of the case, the inconsistencies in the testimonies of Sau. Krishnabai Pawar (PW.5) and Sushila Rajan Pawar (PW-9), on the aspect of the 'last seen' erodes the prosecution case. Thirdly, the prosecution suppressed the genesis of the occurrence. Though the accused was allegedly found in an injured condition on the very day of the occurrence, the accused was shown to have been arrested on 8th May 2013. There is no justifiable explanation regarding the injuries found on the person of the accused. In the backdrop

of the these infirmities, according to Mr. Satpute, the guilt of the accused could not have been sustained on the strength of circumstantial evidence which is of suspect quality.

11. In opposition to this, Mr. Agarkar, the learned APP supported the impugned judgment. It was urged that the evidence on record especially that of last seen and the circumstances in which the body of the deceased was found with fatal incised wounds leads to no other inference than that of the accused being the perpetrator of the offence. To add to this, the absence of explanation, much less justifiable one, on the part of the accused regarding the circumstances of the transaction in which the deceased met the death, leave no room for doubt regarding the complicity of the accused.

12. The nature of the death, which the deceased met, substantially bears upon the complicity of the accused. As the evidence led by the prosecution on the nature of the death and the authorship thereof cannot be appraised in water tight compartments, it may be apposite to note the resume of the evidence, cull out the circumstances which, according to the prosecution, incriminate the accused, and, thereafter, evaluate the evidence on the touchstone of the principles on which the guilt can be sustained in a case based on circumstantial evidence.

13. Sau. Krishnabai Pawar (PW-5), the first informant unfurled the

prosecution case. Sau.Krishnabai Pawar (PW-5) endeavoured to impress upon the Court that post marriage, while the deceased was residing at her matrimonial home at Randullabad, there were frequent quarrels between the accused and the deceased. The accused used to severely beat the deceased. Eight months' prior to the occurrence, the accused and the deceased had come to reside with her at Khatgun. The accused was intent on residing separately from her at Khatgun. On 5th May 2013, at about 9:00 a.m., the accused and the deceased went to the field known as 'Kolki Shivar' to bring a log for supporting the roof of the hut. The accused and the deceased carried a scythe and a water bottle.

14. Sau.Krishnabai Pawar (PW-5) wants the Court to believe that at about 11:00 a.m., she went to the said field to graze goats. The deceased did not respond to her calls. She claimed to have found the deceased lay beneath a mango tree. As she went close to the deceased, she noticed that the deceased had suffered cut injuries on the left wrist and neck. The scythe had broken into two pieces. There was a blade near the body of the deceased. The scythe and the blade had blood stains. Sau. Krishnabai Pawar (PW-5) deposed that she realized that the accused caused the death of the deceased as the accused suspected the chastity of the deceased and always beat her on that count. Thereupon, she raised alarm and called nearby residents.

15. This version of Sau. Krishnabai (PW-5) on the aspect of the nature of the marital relationship between the accused and the deceased, the discord leading to frequent disputes and the deceased being found in a fatally injured condition on the day of occurrence, was sought to be corroborated by Dharam C. Pawar (PW-6), a cousin of the deceased. Dharam Pawar (PW-6) affirmed that after marriage, the accused suspected the character of the deceased and often beat her. The deceased had lodged reports with Vathar police on 2 to 3 occasions. The deceased had once attempted to commit suicide by jumping into well. He claimed to have accompanied the party which had gone to persuade the accused not to ill-treat and harass the deceased. Later on, the deceased was brought at her parental home. Dharam Pawar (PW-6) claimed to have heard the cries raised by Sau.Krishnabai (PW-5) and rushed to the field 'Kolki'. He saw body of the deceased with bleeding injuries on her neck and left wrist.

16. Mrs.Sushila Rajan Pawar (PW-9), a neighbour of the first informant, claimed to have seen the deceased and accused at about 9:30 a.m. on the day of occurrence while they were standing in her courtyard. The deceased was then carrying a scythe and a water bottle. Mrs.Sushila Pawar (PW-9) also claimed to have rushed to the scene of occurrence and found the deceased in a fatally injured condition with blade and broken scythe beside her.

17. Recourse to the medical evidence, at this juncture, would be necessary. Dr.Sau.Meghana Pandurang Patil (PW-8), the Autopsy Surgeon, then attached to Primary Health Centre, Pusegaon, claimed to have conducted the post-mortem examination on the body of the deceased in between 1:00 p.m. to 1:30 p.m. She found following external injuries on the body of the deceased :

- “1) 1 x 4 Cm. in size, muscle deep on left hand wrist, bleeding plus.
- 2) 1 x 6 Cm. in size, superficial skin deep on left hand wrist.
- 3) 2 x 1 Cm. in size, muscle deep, bleeding plus on left side of neck, at lateral side.
- 4) 4 x 2 Cm. in size, muscle deep, bleeding plus on left side neck.”

18. Dr.Sau.Meghana Patil (PW-8) further affirmed that the deceased was carrying six months' pregnancy. In the opinion of Dr.Sau.Meghana Pandurang Patil (PW-8), all the injuries were ante mortem. The probable cause of death was haemorrhagic shock due to injuries. She further opined that the aforesaid injuries were possible by blade and scythe, which were shown to her.

19. The circumstantial evidence consists of the discovery allegedly made by the accused leading to the recovery of the clothes which he wore at the time of occurrence. The discovery was sought to be established by examining Mr. Rahul Jadhav (PW-4), a public witness. He affirmed that on 9th May 2013, while the accused was in police custody, the latter made a statement that he would show the place where he had kept clothes, which

he wore at the time of occurrence. Its memorandum (Exh.10) was drawn. Thereafter, the accused led the police party to a hut on the side of Jakhangaoon road. There were dense Pongame (Karanj) trees. The accused showed the clothes, i.e., shirt (Article 'A') and pant (Article 'B') which were kept beneath the Pongame (Karanj) tree. The same were seized under seizure memo (Exh.P-11).

20. It would be contextually relevant to note that the prosecution arrayed a circumstance of the accused having had a change of clothes on the day of occurrence, as the clothes; shirt (Article 'A') and pant (Article 'B'), which the accused wore at the time of occurrence, were stained with blood. This circumstance was sought to be established by examining Dayanand Shirke (PW-7), who informed the Court that on 9th May 2013, while he was in his field known as "Bamanki", the police party came thereat along with the accused. He claimed to have noticed the clothes (pant and shirt-Articles 17 and 18), which he had kept in the field, on the person of the accused. Dayanand (PW-7) claimed to have questioned the accused as to how he came to wore those clothes. Thereupon, the accused disclosed that as his clothes were blood stained he had changed the clothes.

21. The C.A. report (Exh.23) reveals that the full shirt and full pant (Article A and B) had considerable number of blood stains, spread at

places, of 'O' group. The changed clothes which were subsequently recovered under the seizure memo (Exh.44) also had blood stains of 'O' group. It is necessary to note that the blood of the accused and the deceased was found to be of the same group, i.e. 'O'.

22. Mr. Dhananjay Pingale (PW-11), the investigating officer, professed to throw light on the circumstances in which the accused came to be apprehended. The investigating officer affirmed that the accused was apprehended on 5th May 2013 by a police team from a hut like structure situated along Jakhangaon-Khatgun road. He claimed to have noticed wounds on both wrists of accused. Thus, the accused was referred to Primary Health Centre, Koregaon for medical examination along with requisition (Exh.43). The requisition reveals that the police had found injuries on the wrist as well as neck of the accused. The accused was discharged on 8th May 2013 from Civil Hospital, Satara. Dhananjay Pingale (PW-11) affirmed that the medical papers revealed that the accused had made attempt to commit suicide by inflicting injuries on his wrist. Dhananjay Pingale (PW-11) deposed to the disclosure statement allegedly made by the accused leading to the recovery of the blood stained clothes under panchnama (Exh.11).

23. In the context of the aforesaid evidence, the prosecution pressed into service the following circumstances which incriminate the

accused :-

(1) The accused had a strong motive to commit the murder of the deceased as the marital relations were extremely strained, with the history of an attempt to commit suicide by the deceased fed up with the ill-treatment at the hands of the accused.

(2) On the day of occurrence in between 9.00 a.m. to 9:30 a.m., the accused and the deceased were 'last seen together' on their way to the field (Kolki Shivar) with the weapon, i.e., scythe, and water bottle.

(3) Within 2-3 hours of the accused and the deceased having been last seen together, the deceased was found with fatal injuries on her wrist and neck.

(4) The accused was found missing from the vicinity of the said spot.

(5) The accused made a discovery leading to the recovery of clothes which were stained with blood of 'O' group.

(6) The accused had changed the clothes with a view to conceal the condition caused by blood stains on his person.

(7) Injuries found on the person of the accused were self inflicted by the accused as he was overcome by the guilt of having committed the murder of his wife.

(8) The accused did not offer any explanation, much less justifiable, despite the incriminating circumstances having been put to the accused.

24. The learned Additional Sessions Judge was of the view that the aforesaid circumstances were firmly and cogently established. The circumstances were of definite nature and conclusive tendency. The chain of circumstances was complete. The circumstances cannot be explained on any other hypothesis than that of the guilt of the accused and they were also incompatible with the innocence of the accused. The fact that the accused did not offer any explanation regarding the circumstances in which he parted company with the deceased and how the deceased sustained those fatal injuries weighed with the learned Additional Sessions Judge.

25. Whether the aforesaid approach of the learned Additional Sessions Judge is justifiable?

26. In the context of the marital relationship between the deceased and the accused and the indisputable fact that they were residing at Khatgun along with the first informant, the “last seen theory” constitutes the linchpin of the prosecution case. The claim of Sau. Krishnabai Pawar (PW.5), the first informant that the accused and the deceased had gone to the field ‘Kolki’ to collect a wooden log and they had been carrying a water bottle and a scythe found an unwavering support in the testimony of Mrs.Sushila Pawar (PW-9). Barring slight deviation as regards the time at which the accused and the deceased proceeded towards the field ‘Kolki’, Mrs.Sushila Pawar (PW-9) corroborated the testimony of Sau. Krishnabai

Pawar, the first informant, on material particulars. In the backdrop of the close living to which the residents of a small habitat are accustomed to, there is no justifiable reason to discard the testimony of Sau. Krishnabai Pawar (PW-5) and Mrs.Sushila Pawar (PW-9) on the aspect that the accused and the deceased had together left their house for the field (Kolki).

27. The fact that the deceased was found beneath the mango tree in the said field, within a couple of hours of the accused and the deceased having left the house, can also be said to have been proved beyond the shadow of doubt. Mr.Satpute, the learned counsel for the appellant endeavoured to draw mileage from the discrepancy in the inquest panchnama (Exh.12) and the postmortem report (Exh.29) as regards the time at which the inquest was held and postmortem examination was conducted. The inquest (Exh.12) reveals that it was conducted in between 1:15 p.m. to 2.00 p.m. Whereas, the postmortem report (Exh.29) shows that the body was brought at Pusegaon Public Health Centre at 12:30 p.m. and the autopsy was conducted in between 1:00 p.m. to 1:30 p.m. The requisition for postmortem (Exh.40) indicates that the inquest was held before the body was sent for postmortem examination. It records the time of death as 12:30 p.m.

28. Mr.Satpute, the learned counsel for the appellant invited the attention of the court to the testimony of Dhananjay Pingale (PW-11), the

investigating officer, to the effect that the inquest was held before the body was sent for postmortem examination, and urged that the timeline noted in the inquest (Exh.12) and postmortem report (Exh.29) suggests to the contrary and indicates that the postmortem examination was conducted prior to holding inquest.

29. Indeed there is a discrepancy as regards the time at which the inquest and postmortem were conducted, if the sequence of the events, deposed to by the investigating officer, is to be believed. However, the said discrepancy is not sufficient to throw the prosecution case overboard. There is ample evidence to indicate that the first informant found the deceased lying in a motionless state with fatal injuries and when she raised alarm, the prosecution witnesses, Dharam Pawar (PW-6) and Mrs. Sushila Pawar (PW-9) went to the scene of occurrence and found the deceased lying beneath the mango tree.

30. In any event, the interval of time between the accused and the deceased leaving together their home and the deceased having been found dead in the field 'Kolki', did not exceed three hours. It is trite law that the 'last seen' theory comes into play when the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead, is so small that the possibility of any person other than the accused being the perpetrator of the offence, is inconceivable. In

the facts of the instant case, the time gap of about three hours cannot be said to be a long one so as to rule out the application of the circumstance of 'last seen together'. Thus, we are persuaded to hold that the prosecution has succeeded in establishing that the accused and the deceased were, "last seen together" on their way to the field 'Kolki' and within 2 to 3 hours thereof, the deceased was found dead with fatal injuries on her wrist and neck. We will advert to the question as to whether, in the facts of the case, the conviction is sustainable on the circumstance of "last seen" a little later.

31. This propels us to the pivotal question of the nature of the death which the deceased met. In the cross examination of the prosecution witnesses, an endeavour was made to draw home the point that the deceased had died by suicide. At the threshold, it must be noted that the defence wavered from one end to another. In his examination under section 313 of the Code, the accused did not categorically assert that the deceased committed suicide. The situation is further accentuated by the fact that the onus lay upon the accused to explain the circumstances in which the accused parted with the company of the deceased, or for that matter, the circumstances of the transaction which led to the death of the deceased in the face of overwhelming evidence to indicate that the accused and the deceased had together gone to the field 'Kolki'.

32. Undoubtedly, the deceased died in unnatural circumstances.

Nonetheless, the prosecution is enjoined to prove the homicidal nature of the death. The nature of the injuries found on the person of the deceased and the attendant circumstances are of determinative significance. As noted above, two injuries were found on the left hand wrist and two on the left side of the neck of the deceased. It was brought out in the cross examination of Sau.Krishnabai (PW-5) that the right hand was the dominant hand of the deceased. Laying stress on the aforesaid nature of the injuries, especially the parts of the body selected, and one of the wound on the wrist and the neck appearing to be a trial wound, it was strenuously urged that the possibility of the deceased having committed suicide by causing such wounds, cannot be ruled out.

33. The determination of the question as to whether the wounds were the results of suicide or homicide is not free from difficulties. The question is often answered with reference to the following points :

- (a) The situation and character of the wounds;
- (b) The number, direction and extent of the wounds; and
- (c) The condition and the locality, the surrounding of the wounded person and the circumstances of the injury.

34. As regards the situation and character of the wound, in Modi's Textbook of Medical Jurisprudence and Toxicology, 24th Edition, the following observations are made:-

“Suicidal wounds are usually on the front or on the sides of the body, and affect the vital organs. They are usually incised, punctured or gunshot wounds. Suicidal incised wounds are

generally situated on the front of the body in easily accessible position, especially, on the throat, chest, or wrist. These may be found in unusual regions.”

35. As regards the hesitation/tentative cuts, it is noted as under :-

“ Sometimes, there are two or more superficial and cuts at the commencement of the wound, when the suicidal is still hesitating or nervous, and then makes a deep cut, after plucking up courage to destroy himself.”

Suicidal wounds of the throat inflicted by a right-handed person are usually high up in the neck and are directed obliquely from a higher to a lower level and from below the left ear to the right side under the chin, and shows tailing (tapering) at the point of withdrawal of the weapon, while homicidal wounds of the throat, when inflicted from the front by a right-handed person, are, as a rule horizontal and directed from right to left; but the reverse is the case if the assailant happens to be the left-handed. Again, a homicidal wound on the throat may resemble a suicidal one, if the assailant has inflicted it from behind the victim or by standing on the right when the victim is lying. It is difficult to decide in the case of ambidextrous person, who can use both hands.”

The difference between suicidal and homicidal cuts are as follows :

<i>Suicidal or self-inflicted</i>	<i>Homicidal</i>
<i>Accessible and elective anatomical sites like wrist or neck</i>	<i>Anywhere in the body.</i>
<i>Multiple, linear, parallel cuts</i>	<i>Their position and shape vary.</i>
<i>Usually incised stab wounds</i>	<i>Usually chop wounds. Stabs and lacerations may also be present.</i>
<i>They are superficial at the commencement and end is deeper.</i>	<i>They are deeper at the commencement and end is superficial.</i>
<i>In the right handed persons from left to right and from above downwards.</i>	<i>Any direction</i>
<i>Defence or protection cuts absent.</i>	<i>Defence or protection cuts present usually over the ulnar border of forearm.</i>

<i>Hesitation cuts usually present.</i>	<i>Hesitation cuts usually absent.</i>
<i>Weapons are usually found grasped due to cadaveric spasm or found near body.</i>	<i>Weapons are usually absent.</i>
<i>Scene of crime is usually closed room. There are no disturbances of surroundings.</i>	<i>Scene of crime is disturbed and signs of struggle may present.</i>
<i>Clothes not damaged.</i>	<i>Clothes may be damaged.</i>

36. Readverting to the facts of the case, the injuries found on the person of the deceased were on accessible and elective parts i.e. wrist and neck. The injuries represent parallel cuts. One of the injury on the wrist is superficial. The first injury on the neck, though cut the muscle, was not very deep i.e. 2 x 1 cm. (injury No.3 noted above). Conversely, no defence wound was found on the person of the deceased. The presence of two weapons, i.e. the scythe and blade at the scene of occurrence is also of some relevance. It does not appear that the injuries were caused by scythe. Had the injuries been inflicted by scythe, either self- inflicted or homicidal, the sites and dimensions of the injuries would have been different. Had it been a case of assault perpetrated with intent to cause the death of the deceased, the sites would not have been so elective. In the totality of the circumstances, an element of reasonable doubt as regards the nature of the death, which the deceased met, arises from the very evidence led by the prosecution.

37. It is true that the accused did not endeavour to offer an explanation

as regards the circumstances in which the deceased suffered the aforesaid injuries, when confronted with the incriminating material. The question which, however, wrenches to the fore is whether the failure to offer the explanation is sufficient to fasten the liability on the accused? Before we advert to deal with the aspect of the onus of proof, under the provisions contained in section 106 of the Evidence Act, especially in the backdrop of the proved circumstances of 'last seen', we deem it appropriate to evaluate the evidence on other circumstances arrayed against the accused.

38. The learned APP would urge that the existence of a strong motive to eliminate the deceased has been established beyond the shadow of doubt by the testimonies of Sau.Krishnabai (PW-5), Dharam Pawar (PW-6) and Mrs. Sushila Pawar (PW-9). The proved motive, according to learned APP, constitutes a strong circumstance against the accused. The evidence on record indicates that the marital life of the accused and the deceased was not free from discord. While the accused and the deceased were residing at Randullabad, the marital discord had resulted in lodging of the report by the deceased against the accused. The deceased had even attempted to commit suicide. Indisputably, prior to few months of the occurrence, the accused and the deceased had shifted to Khatgun.

39. It is imperative to note that Sau. Krishnabai (PW-5) did not profess to inform the Court that the ill-treatment at the hands of the accused

continued even after the accused and the deceased shifted to Khatgun. Though Dharam Pawar (PW-6), the cousin of the deceased, endeavoured to impress upon the Court that there was a continuous quarrel between the deceased and the accused 4 to 5 days immediately preceding the occurrence, yet he conceded that he had not apprised anybody about the said fact. Mrs.Sushila Pawar (PW-9) affirmed that since the time the accused and the deceased came to reside at Khatgun, the accused was behaving well.

40. The aforesaid evidence does not establish to the hilt the fact that the marital discord continued even after the accused and the deceased shifted to Khatgun. Conversely, an inference is plausible that the accused and the deceased were living at Khatgun disabused of the marital discord. In the circumstances of the case, in the absence of any positive evidence, motive to eliminate the deceased cannot be attributed to the accused on the premise that, before the accused and the deceased shifted to Khatgun, their marital life was afflicted with discord.

41. The evidence of discovery stands on a weaker foundation. Rahul Jadhav (PW-4), the public witness to the discovery, affirmed that the accused led the police party to the field on Jakhangaon road and produced the clothes (Articles A and B) kept beneath the Pongame (Karanj) tree. Mr.Dayanand Shirke (PW-7), the landholder, however, affirmed that the

clothes were kept in his hut and they were seized by police. The exact place wherefrom the clothes (Articles A and B) were allegedly recovered at the pointing out by the accused, is thus in the realm of uncertainty. Moreover, Rahul Jadhav (PW-4) appeared to be amenable to the influence of police as he conceded that since five years, prior to the said discovery, he had been delivering milk in the police colony.

42. The next circumstance of accused having changed the clothes with a view to conceal the fact that the clothes which he wore at the time of occurrence were stained with blood, is not of conclusive tendency and incriminating nature. Admittedly, the accused was found in an injured condition. Wounds were found on both the wrists and neck of the accused. Dhananjay Pingale (PW-11) conceded in the cross examination that when the accused was apprehended on the very day of occurrence, he did not prepare panchnama/memo recording the injuries found on the person of the accused. Nor a medico-legal certificate was obtained from the Public Health Centre, Koregaon regarding the injuries noted on the person of the accused. The aforesaid evidence unmistakably indicates that the accused had visible injuries, on his person, when he was apprehended. The presence of blood stains on the clothes of the accused, which he wore on the day of occurrence, therefore, cannot be construed as an incriminating circumstance. Nor can it be said that it cannot be explained on any other

hypothesis. The C.A. report do not advance the case of the prosecution any further as the blood group of the accused and the deceased was the same, i.e. 'O'.

43. As regards the injuries on the person of the accused, the prosecution made an endeavour to draw home the point that the accused had self inflicted those injuries overcome by the feeling of guilt. In his examination under section 313 of the Code, the accused asserted that he had hurt himself in the police station after the police arrested him as he was not shown the dead body of the deceased. This explanation may not appear worthy of acceptance as the said case was never put to the prosecution witnesses, especially to the investigating officer. Nonetheless, the fact that the accused was apprehended on 5th May 2013 and he was shown to be formally arrested on 8th May 2013 is indisputable. The failure to obtain medico-legal certificate evidencing the examination of the accused on 5th May 2013, in this backdrop, cannot be said to be wholly inconsequential. It would be, therefore, rather hazardous to draw an inference that the said attempt on the part of the accused to cause injuries to himself was due to the fact that the accused was overcome by the guilt, as held by the learned Additional Sessions Judge.

44. The situation which thus emerges is that there is a clear evidence of 'last seen' and the death of the deceased within a couple of hours of the

deceased and the accused having been last seen together. There is also no explanation on the part of the accused either as regards the circumstances of the transaction which led to the death of the deceased or the circumstances in which he parted company with the deceased. In contrast, from the very nature of the injuries on the person of the deceased and the attendant circumstances, there is a reasonable doubt as regards the nature of the death which the deceased met. The wounds found on the person of the deceased especially the situs, elective parts, and nature are suggestive of suicidal infliction. As the fundamental fact of the deceased having met a homicidal death itself is in the corridor of uncertainty, in our view, the circumstance of 'last seen', and the failure of the accused to offer a plausible explanation, on their own, are not sufficient to sustain the guilt of the accused beyond reasonable doubt.

45. It is a well established proposition that section 106 of the Evidence Act does not relieve the prosecution of its general or primary burden of establishing the guilt of the accused beyond reasonable doubt. The pronouncement of the Supreme Court in the case of *Sawal Das Vs. State of Bihar*¹ is instructive. It reads as under :-

“10 Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or,

1 (1974) 4 SCC 193

which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused. ”

46. Where the prosecution succeeds in discharging its primary burden and brings evidence on record which indicates that the facts, thereby proved, rest within the special knowledge of the accused, section 106 of the Evidence Act comes into play. In the case of ***State of Rajasthan Vs. Kashi Ram***², wherein the accused-respondent was prosecuted for having committed murder of his wife and two daughters and the deceased was last seen in the company of the accused, expounding the nature and import of the provisions contained in section 106 of the Evidence Act, the Supreme Court observed as under :-

“23.....The provisions of [Section 106](#) of the Evidence Act itself are unambiguous and categorical 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

2 (2006) 12 SCC 254

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.”

47. Two propositions emerge from the aforesaid exposition. One, if an accused is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. Two, the failure of the accused to offer a reasonable explanation in discharge of the said burden provides an additional link in the chain of circumstances proved against the accused.

48. In the instant case, the incriminating potential of the circumstance of failure to offer the explanation hinges upon the proof of the fact that the deceased met a homicidal death. In the backdrop of the fact that the homicidal nature of the death has not been established to the hilt, in our view, the prosecution case rests on the circumstance of “last seen” to a great extent. In the case of *Dharam Deo Yadav Vs. State of Uttar Pradesh* ³, the Supreme Court expounded the legal position as regards sustaining the guilt on the only circumstances of ‘last seen’ in the following words :-

“19 It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into.”

49. In the case at hand, on balance, we find that the aforesaid

³ (2007) 3 SCC 755

circumstance of the deceased having been found dead after the accused and the deceased had left the house for the field gives rise to a strong suspicion. It is trite law that suspicion, however strong, cannot take the place of proof. This circumstance of 'last seen', in the totality of circumstances, cannot sustain the burden of establishing the guilt of the accused beyond reasonable doubt, especially when the fact of homicidal death is in the realm of uncertainty.

50. It would be apposite to conclude the discussion by making reference to the judgment of the Supreme Court in the case of ***Navaneethakrishnan Vs. State by Inspector of Police***⁴, wherein the legal position in the context of sustaining conviction on the basis of circumstantial evidence, was expounded as under :-

“27 The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a

4 (2018) 16 SCC 161

long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.”

51. The upshot of the aforesaid consideration is that the impugned judgment of conviction for the offence punishable under section 302 of the Penal Code cannot be sustained. The appeal, thus, deserves to be allowed.

52. Hence, the following order :

O R D E R

- (i) The appeal stands allowed.
- (ii) The impugned judgment of conviction and sentence for the offence punishable under section 302 of the Penal Code stands set aside.
- (iii) The appellant-accused Krishna Mahadev Chavan stands acquitted of the offence punishable under section 302 of the Penal Code.
- (iv) The accused-appellant Krishna Mahadev Chavan be released forthwith, if not required to be detained in any other case.

[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]