

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.7 OF 2015

Bhausahab Gulabchand Sonawane (Bhil)

Age : 36 years, occ : labour

R/o Sukwat, Taluka and Dist. Dhule

Appellant

Versus

The State of Maharashtra

Through Police Station Officer,

Songir Police Station, Taluka and

District Dhule

Respondent

...

Mr. Avishkar Shelke, Advocate for the appellant.

Mr. R.D. Sanap, A.P.P. for respondent – State.

...

CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

Reserved on : 22-02-2022.

Pronounced on: 22.03.2022

JUDGMENT (Per Sandipkumar C. More) :

1. The appellant / accused has challenged his conviction recorded by the learned Additional Sessions Judge, Dhule (hereinafter referred to as “the trial Court”) in Sessions Case No. 86/2014 on 18.11.2014 for the offences punishable under Sections 302, 447, 394 and 201 of the Indian Penal Code (for short “I.P.C.”), in the instant appeal. The learned

trial Court has convicted the appellant / accused in the following manner:

“for the offence punishable under Section 302 of I.P.C. the appellant/accused is sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/-.

for the offence punishable under Section 394 of I.P.C. he is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1,000/- in default to suffer rigorous imprisonment for two months.

for the offence punishable under Section 201 of I.P.C. he is sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for one month.

for the offence punishable under Section 447 of the I.P.C. he is sentenced to suffer rigorous imprisonment for one month”.

2. One Latabai, who is deceased in the instant case, was wife of one Murlidhar Supdu Patil i.e. the informant in this case. Both of them are having one daughter namely Mamta, aged about 6 years. Informant Murlidhar is having agricultural land at village Sukwad. Deceased Latabai was having her cell phone of Nokia company black in colour, bearing No. 8698330154. On 04.01.2014 informant Murlidhar was supervising the work of cattle shed which was being done by the labourers. At about 12.00 noon Latabai told him that she was going to field for fetching the cotton crop and also for

taking grass for the cattle. At the relevant time daughter Mamta was at home. At about 5.00 p.m. informant Murlidhar came home after milking his buffalo and asked Mamta to tell her mother to prepare tea for him. When Mamta told that Latabai had not come from the field by that time, he made call to Latabai from his cell phone, but the cell phone of Latabai was found switched off. Therefore, Murlidhar alongwith daughter Mamta went to his field on motorcycle to see Latabai. After reaching there he gave call to Latabai by blowing horn of the motorcycle. However, Latabai did not respond. Hence, he asked one Bajirao Ragho Patil about Latabai and at that time Bajirao told him that she must have gone to home by that time. Thereafter informant Murlidhar went in the crop of cotton which was having height of 5.5. ft. He saw the cotton crop and soil in disturbed condition just ahead of one spot. When he went further, he saw his wife Latabai lying on the ground and the soil in the field was wet due to raining. When he went close to his wife, he noticed bleeding injuries on her face, lips, hand and all over the body. One stone and stick were also lying there having blood stains thereon. The handkerchief of Latabai was also lying there and it was also stained by blood. Informant Murlidhar raised shouts and on hearing the same, Bajirao

Patil as well as daughter Mamta rushed there. Latabai was dead at the relevant time, and therefore, Murlidhar suspected that somebody must have killed her. At the time of incident Latabai had worn pink colour saree, pink colour blouse and pink colour petticoat. Informant Murlidhar also found that certain gold ornaments of Latabai were missing. He also did not find mobile handset of Latabai with her. Therefore, he suspected that the same might have stolen by the person who had killed Latabai. Then informant Murlidhar lodged complaint of the incident to Police Station, Songir vide Exh.25.

3. On the next day i.e. on 05.01.2014 informant Murlidhar came to know from his brother Ramesh Supdu Patil that when Ramesh was passing by his field while grazing his buffalo, at about 11.30 a.m. the appellant/accused was found sitting on one Neem tree. When Ramesh asked him what the appellant was doing there, the appellant told him that he was cutting certain branches of that tree for firewood. Further, the informant Murlidhar also came to know from his nephew Anil Bhaidas Patil that he had seen the appellant on the day of incident at about 2.30 p.m. in the village itself and at that time the appellant was having fresh

scratch marks and abrasions on his face. It was also found that the appellant was missing from the village. As such, doubt of Murlidhar got confirmed, and therefore, he under the supplementary statement recorded by the Investigating Officer on 05.01.2014, made accusation against the appellant for committing murder of his wife.

4. Songir police authorities had already registered Crime No. 2/2014 against the unknown person initially on 04.01.2014 for the offence under Section 302 of I.P.C. Investigating Officer API Pradip Balasaheb Deshmukh (PW-13), on receiving the information about the incident at about 6.00 p.m. on 04.01.2014, visited the spot of incident where he saw dead body of Latabai. He then sent the said dead body for postmortem through one constable to Civil Hospital, Dhule and had also recorded the complaint of Murlidhar. He then called finger print expert and dog squad on the spot and also prepared spot panchnama. He seized one stone, one handkerchief, blood mixed soil, simple soil, one stick of Neem tree, one pair of the slipper, one stick of plant of cotton and one long black hair from the spot. All those articles were having blood stains. Accordingly, he prepared spot panchnama (Exh.34). He also prepared inquest panchnama

over the dead body as per Exh. 12 and seized clothes of deceased Latabai. After recording statements of some witnesses, he tried to trace out location of cell phone of deceased Latabai, but he could not collect the CDR of the said mobile as it was found switched off.

5. As it was revealed during the investigation to the Investigating Officer that the appellant / accused was seen near the spot of incident at the relevant time, he, on suspicion, went to the house of appellant / accused. However, the appellant was not present in his house, and therefore, the Investigating Officer recorded statement of the wife of appellant wherein suspicious conduct of the appellant after the incident was found. Thereafter location of the mobile of appellant was traced being near Chalisgaon Square of Dhule on 14.01.2014, and therefore, Investigating Officer by going there took the appellant in his possession. When the Investigating Officer carried out personal search of the appellant in presence of two panchas, he found one small plastic bag of pink colour consisting of some golden colour bids and pendal of Mangalsutra. The appellant was also found possessing one China made black colour mobile and some cash. The bids and Mangalsutra were verified from one

goldsmith namely Nashikkar and by obtaining his certificate, the same were seized. The clothes of appellant were also seized at that time under panchnama (Exh.14).

6. On 17.01.2014 appellant/accused made disclosure statement while in custody before the panchas and agreed to show the places where the incident took place as well as where he burnt his clothes, shoes and mobile and also the place where he kept the scythe. Thereafter the aforesaid places were searched at the instance of appellant/accused and recovery was made in respect of those articles. Then the Investigating Officer obtained CDR of cell phone of deceased and according to it, the location of the said cell phone was traced at Malegaon city. Investigating Officer with the help of police officials of Ashiya Nagar Police Station, Malegaon, recovered the said mobile from Shaikh Ismail and Shaikh Ibrahim and from them it was revealed that they got the said mobile phone from a person in lieu of fare of their rickshaw. The appellant, on his arrest, was also got examined from Civil Hospital, Dhule and at the time of arrest there were some signs of old injuries on his face. The Investigating Officer then collected CA reports in respect of seized muddemal which are on record at Exh. 50 collectively. The informant

Murlidhar had also identified the golden articles and black coloured Nokia mobile handset being of his deceased wife. On completion of investigation, the Investigating Officer i.e. PW-13 API Pradip Deshmukh submitted charge-sheet against the appellant on 10.04.2014.

7. The concerned Magistrate committed the case to the Sessions Court, Dhule and on appearance of the appellant before the learned trial Court, charge under aforesaid sections was framed against him below Exh.6. When the said charge was read over and explained to the appellant, he denied the same and claimed trial. On commencement of trial the learned trial Court examined in all 13 witnesses and thereafter recorded statement of appellant/accused under Section 313 of the Code of Criminal Procedure. Defence of the appellant was found to be of total denial. Thereafter the learned trial Court on considering the entire evidence against the appellant in the light of the submissions of rival sides, convicted him as mentioned above.

8. We have carefully gone through the entire evidence on record and also the impugned judgment. Further, we also heard rival submissions.

9. Learned Counsel for the appellant submits that there is no direct evidence against the appellant in the present case about his involvement in the crime. The prosecution case is entirely based upon circumstantial evidence. He further submits that the appellant is arrayed as an accused in the present crime only on the ground that he was allegedly seen by one of the witnesses on the Neem tree at the time of the incident. Learned Counsel for the appellant further submits that though one witness was present near the spot of incident at the relevant time, but he did not hear any shouts in between 10.00 a.m. and 4.00 p.m. on the day of incident during which Latabai was allegedly murdered. Learned counsel for the appellant also submits that though the charge of committing robbery is levelled against the appellant, but it is highly unbelievable mainly because, it was revealed in the inquest panchnama that some golden ornaments were still on the person of the deceased which the appellant could have removed easily had he intended to commit robbery. Further, it is also submitted that CA report in respect of clothes of accused did not support the case of prosecution as no blood was found on the same. He also submitted that false recovery of golden ornaments was shown by the Investigating Officer from the accused even prior to his

arrest which was made at about 9.30 p.m. on 14.01.2014. He pointed out that though PW-2 Ismail was not knowing the appellant on regular basis, but there was no attempt from the Investigating Officer for conducting test identification parade of the appellant for PW-2. With these submissions, learned Counsel for the appellant prayed for acquittal of the appellant for want of any conclusive evidence. Besides the aforesaid submissions, learned Counsel for the appellant also relied on the following judgments :

- (i) Shambhu Nath Mehra vs. The State of Ajmer AIR 1956 SC 404.*
- (ii) Digamber Vaishnav & another vs. State of Chhattisgarh 2019 ALL SCR (Cri) 1009.*
- (iii) Sk. Yusuf vs. State of West Bengal. (2011) 11 SCC 754.*
- (iv) Criminal Appeal No. 2374/2014 (Satye Singh and another vs. State of Uttarakhand)*

10. On the contrary, learned A.P.P. strongly submits that though the crime was initially registered against an unknown person, but during the course of investigation, it was revealed that the appellant was in fact the only person who committed the crime. He submits that the appellant was found near the spot of incident at the time of incident. Further, some witnesses also noticed fresh scratch marks on

the face of the appellant just after the incident which might have caused when the deceased Latabai tried to defend herself. Further, the golden ornaments of the deceased were also found in possession of the appellant / accused. Learned A.P.P. further submits that there are also other circumstances on record which indicate that it was only the appellant who committed murder of Latabai. As such, the learned A.P.P. supported the impugned judgment and order and prayed for dismissal of the appeal.

11. After going through the entire evidence on record, it is clearly evident that there is no direct evidence against the appellant and the case is entirely based upon circumstantial evidence. Learned Counsel for the appellant has relied upon the judgments as mentioned above. The judgment in the case of ***Shambhu Nath Mehra vs. State of Ajmer*** (supra) is on the scope and object of section 106 of the Indian Evidence Act wherein the Hon'ble Apex Court has discussed as to how and in what manner section 106 aids in securing explanation from the accused. It has been observed that it is a general rule that in any criminal case burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet

certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. Thus, it appears that the aid of section 106 can be taken only after the establishment of the circumstances against the accused by the prosecution about his guilt. However, this position is already settled one and the applicability of section 106 of Evidence Act depends upon the facts of each case.

12. The judgments in the cases of *Digamber Vaishnav vs. State of Chhattisgarh*, *Sk. Yusuf vs. State of West Bengal* and *Criminal Appeal No. 2374/2014 (Satye Singh and another vs. State of Uttarakhand)* (supra) relied on by the learned Counsel for the appellant deals with the issue of conviction of accused on the basis of circumstantial evidence. The sum and substance of the aforesaid judgments is that, when the circumstantial evidence is to be relied upon against the accused, then the prosecution has to establish a complete chain of circumstances leading to the guilt of accused. It is observed that if the circumstances do not conclusively establish the guilt of the accused, he is entitled for benefit of

doubt. Further, it is also observed by the Hon'ble Apex Court in the case of *Digamber Vaishnav vs. State of Chhattisgarh* (supra) that there cannot be any conviction on the basis of suspicion howsoever grave it may be. It is further observed that strong coincidences and grave doubt cannot take place of legal proof. Moreover, in the case of *Sk. Yusuf vs. State of West Bengal* (supra), the Hon'ble Apex Court has commented upon the last seen theory and observed that it would come into play only where 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 possibility of any person other than the accused being the author of the crime becomes impossible. However, all the aforesaid observations indicate settled position as to how the circumstantial evidence is to be used in criminal matters. Obviously there are different set of facts in every criminal proceedings and the nature of circumstantial evidence also differs from case to case, and therefore, while relying upon the circumstantial evidence, one has to stick up to the facts of that case only. Therefore, in the light of aforesaid observations we must scrutinize the fact of the instant case in the light of the evidence and circumstances on record in view of the allegations made against the appellant.

13. Learned Counsel for the appellant / accused at the opening of his submission did not dispute the death of Latabai being a homicidal one. Even otherwise also, considering the various injuries found on the person of deceased as per the evidence of PW-1 Dr. Ajit Patil being 24 in numbers including incise wounds, fracture wounds and internal injuries to the vital part of the body, clearly indicate homicidal death of Latabai. It is the case of the prosecution that on the day of incident Latabai alone had gone to her field for fetching cotton and for bringing grass for the cattle and as she did not return, PW-4 Murlidhar i.e. her husband when went to search her, she was found dead in the field itself with various injuries. Admittedly, the present crime was registered against unknown person on the complaint lodged by PW-4 Murlidhar. However, the possibility of involvement of the appellant in the crime surfaced only when PW-10 Ramesh Patil i.e. the brother of informant Murlidhar told him that he saw the appellant sitting on one Neem tree near his field on the day of the incident at about 11.30 a.m. to 12.00 in the noon. He had even asked the appellant what he was doing there and at that time the appellant told him that he was cutting fire woods. Thereafter PW-9 Anil Bhaidas Patil also told that on the day of the incident at about 2.30 p.m. he met

the appellant in the village itself and at the relevant time he noticed some fresh injuries on the face of the appellant who was also in frightened condition. Thus, it appears that due to narration of these witnesses the informant PW-4 Murlidhar got suspicious about the involvement of appellant in the present crime.

14. On perusal of the evidence of informant Murlidhar, it appears that on the fateful day his wife Latabai had gone to field in the morning, but did not return and therefore, he went to his field in search of her with daughter Mamta in the afternoon at about 5.00 p.m. When he found his wife was brutally murdered, he noticed that some of her ornaments were missing. He also found stone and stick with blood stains on the spot of the incident. He could not find black coloured mobile handset of his wife which she had carried with her at the time of going to the field. It is to be noted here that after getting the knowledge of incident, he immediately lodged complaint to Police Station, Songir against an unknown person. However, on the next day he came to know from his brother Ramesh i.e. PW-10 that the appellant was found sitting on Neem tree at about 11.00 p.m. on the day of the incident and the said Neem tree was adjacent to his field.

He also got knowledge from his nephew namely Anil Bhaidas i.e. PW-9 that on the day of incident he saw appellant in the village itself at about 2.30 p.m. and at that time PW-9 Anil noticed some scratch marks on the face of the appellant and on asking, the appellant told Anil that those scratch marks were due to falling from the motorcycle. From the evidence of informant Murlidhar two circumstances are evident against the appellant / accused that the appellant was present near the spot of incident on the day of incident and that immediately in the afternoon some scratch marks were found on his face.

15. From the evidence of PW-10 Ramesh it reveals that he had seen the appellant on Neem tree on the day of the incident. Therefore, he materially corroborates the evidence of informant Murlidhar on the said point. It is to be noted here that when PW-10 Ramesh came to know about the death of Latabai at about 5.30 to 5.45 p.m. on the day of the incident from his brother Arun, he again went to the field of Latabai and got knowledge about missing of some golden ornaments and mobile handset of Latabai from his brother Murlidhar. According to him, they formed opinion that the person who had stolen the ornaments and mobile handset

must have killed Latabai. This witness further deposed that PW-9 Anil Bhaidas had told him that when the appellant had come to leave him at Satarne, he noticed fresh injuries on the face of appellant. Therefore, from the evidence of PW-10 Ramesh it reveals that they first suspected about the involvement of appellant in the instant crime. His evidence further discloses that when they went to see the appellant at his house, he was not found there. Moreover, wife of the appellant also told them that he had gone to the field. It is further evident from the deposition of PW-10 Ramesh that they even asked the field owner in whose field the appellant used to work, but the said field owner i.e. Bajirao Ragho Patil had told them that the appellant had not come to his field on that day. Nothing doubtful has come on record in the cross-examination of this witness except the admission that this witness did not hear any shouts till 4.00 p.m. when he was grazing buffalo.

16. PW-9 Anil Bhaidas has deposed that on 04.01.2014 at about 2.30 p.m. when he was intending to go to Satarne village on motorcycle and thereafter to village Khachane by bus, he requested his friend Bhushan Yuvraj to leave him till Satarne village on motorcycle. When the said

Bhushan expressed his inability for that, the appellant meanwhile had come there and asked this witness as to where he was going. PW-9 Anil when told him that he wanted to go to Khachane village, the appellant agreed for leaving him to Satarne village. This witness has specifically stated that at the relevant time when he saw the face of appellant, there were fresh injuries on his face and the appellant was also in frightened condition. On asking about those injuries the appellant told him that he had slipped from the motorcycle. Thereafter this witness brought motorcycle from his uncle and then the appellant left him till Satarne and returned back. It has been further stated by this witness that at about 8.00 p.m. he came to know about the murder of Latabai at village Khachane itself. He has also stated about missing of some ornaments of Latabai and her mobile. Rest of the evidence of this witness on the point of making enquiry of the appellant with his wife and from Bajirao Patil is similar to PW-10 Ramesh. On perusal of cross-examination of PW-9 Anil Bhaidas, nothing adverse to the prosecution case has been brought on record.

17. Thus, if we jointly consider the evidence of PW-4 Murlidhar i.e. the informant, PW-10 Ramesh and PW-9 Anil

Bhaidas, it is evident that there are no material contradictions amongst them in respect of presence of appellant on the Neem tree at about 11.00 a.m. on the day of the incident near the field where Latabai found dead. Further, it can also be gathered from their evidence that fresh injuries were noticed on the face of the appellant/ accused at about 2.30 p.m. and he was also found in frightened condition. Further, from the evidence of PW-9 Anil Bhaidas and PW-10 Ramesh it has been revealed that after suspecting the involvement of appellant in the crime when they went to search him at his house, his wife told them that he was not in the house and must have gone to the field of Bajirao Patil where he usually works. These witnesses appear to have made enquiry with Bajirao Patil who told them that the appellant had not at all come to work in his field on the day of the incident. Thus, the evidence of these three witnesses definitely creates doubt about the appellant / accused being involved in this crime.

18. Now we come to the next important circumstance which connects the appellant/accused to the present crime and it is in respect of the recoveries of stolen ornaments, weapon used in the crime and also the other articles, made

from the appellant/ accused. Prosecution has claimed that when the location of appellant / accused was traced through his cell phone being at Chalisgaon Square of Malegaon, the Investigating Officer went there and took him into his possession. It has also come on record in the evidence of PW-13 A.P.I. Pradip Deshmukh that when the appellant/accused was taken in the custody, his personal search was taken in presence of panchas and at that time some gold ornaments allegedly used by deceased Latabai and his mobile handset were found in possession of the appellant. The evidence of PW-6 Bhatu Patil is vital in that respect. PW-6 Bhatu Patil is the panch witness to whom the police called while taking personal search of the appellant / accused on 14.01.2014 when the police took the appellant in their custody at Chalisgaon Square of Dhule. He has specifically stated that when the police took personal search of the appellant in his presence, there were some scratches on his face. Further, during the said search one China made mobile was found in his shirt pocket. Further, in his inner pocket of pant one plastic bag of pink colour was also found affixed with green tape thereon. Further, it is deposed by this witness that on opening the said plastic bag there were some ornaments comprising one Mangalsutra and 31 loose beads having

symbol of 'RH'. In addition to that 9 currency notes of Rs.100/- denomination were also found in right pocket of the pant of appellant. It is to be noted here that all these articles were shown to this witness during the course of trial and this witness had identified the same. This witness has also deposed that one goldsmith i.e. Ajay Nashikkar was called to confirm those ornaments being made up of gold. We have the evidence of said goldsmith who is PW-5 Ajay Nashikkar. In the evidence of said goldsmith it has also been proved that those ornaments were weighing 7.20 miligrams and purity of the said ornaments was between 85 % to 90 %. The certificate issued by PW-5 Ajay Nashikkar is also thereon record at Exh.28. Not only this, but the said goldsmith also identified those ornaments in the open Court. It is extremely important to note that there is no cross-examination from the side of the appellant / accused of PW-5 goldsmith Ajay Nashikkar. As such, it is an accepted fact that the ornaments found with the appellant were of gold. Moreover, it is extremely important to note that the informant Murlidhar i.e. PW-4, who is the husband of deceased, has identified those ornaments at Article 17 from the muddemal being used by his wife deceased Latabai, since he must have seen his wife wearing those ornaments daily. There is nothing in the cross-

examination of PW-6 Bhatu Patil which can produce serious doubt. Thus, from the evidence of PW-6 Bhatu Patil and PW-5 Ajay Nashikkar it has been revealed that the appellant / accused was found in the possession of gold ornaments of deceased Latabai when his presence was traced out on the basis of his cell phone on 14.01.2014.

19. Further, so far as the recovery of mobile of deceased Latabai is concerned, her husband PW-4 Murlidhar has deposed that deceased Latabai was using one black coloured mobile of Nokia company. It has already come in the evidence of Investigating Officer PW-13 A.P.I. Pradip Deshmukh that during the course of investigation he had given letter to Superintendent of Police, Dhule on 07.01.2014 as per Exh.45 for tracing out the location of the said mobile of deceased Latabai and when the call details of the said mobile of the deceased received by him from the S.P. Office, the location of the said mobile was traced out being in Malegaon city. When he seized the said mobile with the help of police officials of Ashiya Nagar Police Station, Malegaon from Shaikh Ismail and Shaikh Ibrahim, who were father and son respectively, it was revealed that one person had given the said mobile to Shaikh Ismail who is the rickshaw driver, in

lieu of fare of rickshaw. On going through the evidence of PW-2 Sk. Ismail it reveals that he was rickshaw driver and about 5 to 6 months before when he was proceeding to Malegaon new bus stand from Chalisgaon, the appellant / accused stopped his rickshaw and boarded the same to go to new bus stand. PW-2 Shaikh Ismail had also told the appellant that he would charge Rs. 20/- as fare for the same. After reaching at the said bus stand, when other passengers left from there after paying necessary fare, the appellant told PW-2 Shaikh Ismail that he was not having money and then requested to keep the said mobile in lieu of fare and also assured him of paying that amount later on and taking the said mobile back. It has also come in the evidence of PW-2 Shaikh Ismail that since the appellant/accused did not return for taking back the said mobile, he gave the said mobile to his son for using after inserting SIM card in the said mobile. It is further evident from his evidence that Songir police when asked him reason of possessing the said mobile, he told the aforesaid incident to them and consequently the police seized said mobile from him. This witness also identified the appellant / accused before the Court as well as the said mobile handset at Article-25 from the muddemal.

20. Learned Counsel for the appellant vehemently argued that PW-2 Shaikh Ismail was not knowing the appellant prior to the incident of taking the said mobile handset in lieu of rickshaw fare, and therefore, test identification parade of the appellant was necessary for identification of the appellant by PW-2 Shaikh Ismail. However, merely because such test identification parade was not held by the Investigating Officer for such identification, the testimony of PW-2 Shaikh Ismail cannot be disbelieved on the said count. Even otherwise also, keeping a mobile handset in lieu of fare of rickshaw, which was merely Rs.20/-, appears to be unique fact and it is quite possible that PW-2 must have remembered the appellant. Therefore, the identification of the appellant by PW-2 Shaikh Ismail in open Court after some time gap would not be an improbable fact. As such, the evidence of PW-2 Shaikh Ismail definitely indicates that the appellant / accused was carrying mobile handset of the deceased with him.

21. Further, the weapon allegedly used in the crime by the appellant / accused i.e. sickle has also been recovered at his instance only. The prosecution is claiming that the said sickle was with Latabai at the time of incident for the purpose

of cutting grass and the appellant / accused used the same sickle for assaulting the deceased. To establish the said recovery at the instance appellant/accused, prosecution has examined Gulabrao Bhila Jadhav as PW-7. On perusal of the evidence of this witness, it is evident that on 17.01.2014 police had called him at Songir Police Station where the appellant was in police custody at the relevant time. This witness has stated that the appellant, in his presence, made disclosure statement and agreed to show the place where he had hidden the sickle used by him in the commission of crime. Thereafter under the direction of appellant / accused, he alongwith police went to the field of Murlidhar Patil where the appellant produced one iron sickle from the place at a distance of 200 ft from the said field which was hidden in the grass. There is nothing adverse to the prosecution case in the cross-examination of PW-7 Gulabrao Jadhav. On the contrary, though this witness did not speak in respect of the place where the appellant / accused had burnt his clothes and slipper, but in the cross-examination of this witness it has come on record that the appellant/accused had also shown the spot where he had burnt his clothes and slipper. It has already come in the evidence of Investigating Officer that the appellant had taken them towards the bed of river

and shown the spot where he had burnt his clothes and footwear. Further, the panchnama (Exh.33) also reflects that the Investigating Officer had seized the sample of ash from the said spot. It is extremely important to note that the CA report (collectively marked at Exh.50) in respect of the said ash clearly indicates that in the said ash partially burnt plastic material was detected, stated to be of chappal. Thus, this recovery of murder weapon as well as the ash of burnt clothes and chappal clearly suggests involvement of the appellant in the crime.

22. Thus, the prosecution has established entire chain of circumstances indicating the involvement of the appellant in the crime beyond all reasonable doubts. Those circumstances can be summarised as below :

- (i) That, the deceased Latabai had gone to the field wherein the spot of the incident was situated, at about 12.00 noon on the day of the incident.
- (ii) At about the same time, appellant / accused was found sitting on Neem tree near to the said spot.
- (iii) Thereafter at about 2.30 p.m. appellant / accused was seen with fresh scratch injuries on his face on the same day by PW-10 Ramesh.

- (iv) The appellant/accused was not found in his home as well as usual place of his work i.e. in the field of Bajirao Patil on that day.
- (v) The appellant/accused thereafter found absconding from the village.
- (vi) The location of appellant/accused was traced on 14.01.2014 at Chalisgaon Square of Dhule and at that time some gold ornaments of deceased Latabai were found with him.
- (vii) The mobile handset of the deceased was also found with PW-2 Shaikh Ismail which the appellant/accused had given to him in lieu of rickshaw fare.
- (viii) Recovery of sickle used in committing of murder of deceased Latabai at the instance of appellant/accused.
- (ix) Disclosure of the place by the appellant/accused where he had burnt his clothes and footwear.

23. All the aforesaid incriminating circumstances have been proved by the prosecution which are sufficient to hold that it was only the appellant who had committed murder of Latabai on that fateful day.

24. Learned Counsel for the appellant strongly submitted that PW-10 Ramesh was present in the adjacent field and despite such deadly assault he did not hear any shouts from the deceased, and therefore this fact is surprising and also indicative that no such incident might have taken place. However, we are not in agreement with such submission since the aforesaid circumstances have already established by the prosecution which clearly indicate the guilt of the accused.

25. Further, since the appellant was found in possession of gold ornaments of deceased, it could be a good reason for committing murder of Latabai. It can also be gathered that when Latabai had resisted for the same, the appellant / accused made deadly assault on her. There is sufficient evidence on record that after committing murder of Latabai, appellant / accused tried to burn his clothes, and as such, tried to destroy the evidence. The murderous intention of the appellant/accused is apparent from the manner of assault on the deceased as there were almost 24 injuries found on the person of deceased on vital parts. Further, it is evident that the appellant/accused made deadly assault on Latabai with the help of stone as well as sickle.

26. Learned Counsel for the appellant vehemently argued that one cannot expect the plausible explanation from the appellant/accused in respect of the death of Latabai. From the evidence on record it has already been established that though there is no direct evidence against the appellant / accused, but whatsoever evidence is thereon record, is in the form of circumstantial evidence. Further, it is also revealed that the incident had taken place in isolated part of the field, as no one was there near the spot of incident. It is settled position that in criminal proceedings burden of proof always lies on the prosecution, however, under Section 106 of the Indian Evidence Act, the prosecution is exempted from adducing evidence where it is impossible to collect such evidence. In the instant case, the appellant / accused and the deceased were the only persons present at the spot of the incident at the time of crime, and therefore, Section 106 of the Indian Evidence Act comes into play and it shifts the burden of proof from prosecution to the accused person. Admittedly, Latabai was found murdered and the circumstances clearly indicate that it was only the appellant who must have killed her. Therefore, plausible explanation is definitely required from the appellant as to how death of Latabai took place. No such explanation is coming forward

from the appellant/accused in his statement under Section 313 of Cr.P.C. On the contrary, the prosecution has established entire chain of circumstances leading to the guilt of appellant / accused, and therefore, it becomes clear that there was no intervention of any third person in the crime.

27. Thus, considering all these aspects, we are of the opinion that the appellant / accused is the author of the instant crime and the learned trial Court has rightly convicted him as aforesaid. Hence, we do not find any merit in this appeal and accordingly we dismiss the present criminal appeal.

28. We quantify the fees of the appointed learned Counsel for the appellant to the tune of of Rs. 15,000/- (Rupees Fifteen Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)