



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

CRIMINAL APPEAL NO. 318 OF 2020

Deelip Hanumant Khodve,
Age : 28 Years, Occ. Agriculture,
R/o. Yelda, Ta. Ambajogai, District Beed
At present Kharat Aadgaon, Post
Sonnathadi, Tq. Majalgaon, Dist. Beed.

.. Appellant
(Sole Accused)

VERSUS

The State of Maharashtra

.. Respondent

**WITH
CRIMINAL APPEAL NO. 548 OF 2020**

The State of Maharashtra,
Through Police Station Officer,
Police Station Ambajogai- Rural Ambajogai,
Tq. Ambajogai, District Beed.

.. Appellant
(Ori. Complainant)

VERSUS

1. Deelp Hanumant Khodve,
Age : 25 years, Occ. Agriculture,
R/i. Yelda, Tq. Ambajogai,
District Beed

(Ori. Accused)

2. XYZ

.. Respondents

...

*Mr. S. J. Salunke : Advocate for the appellant in Cri. Appeal
No. 318/2020*

*Mrs. Uma S. Bhosale : A.P.P. for Respondent/State and
appellant in Cri. Appeal No. 548/2020*

*Mr. Moinpasha Shaikh Farid h/f Adv. Mr. A.L. Kanade
for Respondent No.2 in Cri. Appl. 548/2020*

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**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

**RESERVED ON : SEPTEMBER 8TH, 2025.
PRONOUNCED ON: NOVEMBER 18TH, 2025.**

JUDGMENT (PER SANDIPKUMAR C. MORE, J):-

1. The appellant in Criminal Appeal No. 318 of 2020 i.e. the original accused in Special (POCSO) Case No. 2 of 2017, is challenging the legality and correctness of the judgment and order dated 02.03.2020, passed by the learned Additional Sessions Judge, at Ambajogai, District Beed (hereinafter referred to as “ the learned trial Judge”) in the aforesaid special case. Under the impugned judgment, the learned trial Judge has convicted the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code, for committing murder of his wife- Preeti, and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 20,000/-, in default to suffer rigorous imprisonment for two months. However, the learned trial Judge has acquitted the appellant/accused from the offence punishable under Sections 376(2), 309, 302 of the Indian Penal Code, for committing rape on a minor girl, and thereafter her murder and also for attempt to commit suicide. The learned Trial Judge has also acquitted

the appellant/accused from the charges under Section 6 of the Protection of Children From Sexual Offences Act, 2012 (POCSO) and 3(w)(i), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in respect of the offence committed with the aforesaid minor girl. The State has filed Criminal Appeal No. 548 of 2020 for the aforesaid acquittal of the appellant/accused. Since both the appeals are arising out of the same judgment, we find it proper to deal with them jointly.

The story of the prosecution, in nut shell, is as under :-

2. The present case involved murder of two women. One is Preeti, wife of the appellant/accused, and other one is referred as a minor girl, aged 17 years, with whom the appellant/accused was allegedly having illicit relationship, and who belongs to Scheduled Caste.

3. As per the prosecution story, on 06.10.2016, P.W.-1 Ranjit i.e. father of minor girl, had lodged the report with Ambajogai (Rural) Police Station alleging that his daughter had gone for grazing the cattle on 04.10.2016. However, on the next morning, i.e. on 05.10.2016, she was found dead under one Neem tree, in the field belonging to father of

accused. Further, it was also found that Preeti- the wife of accused also died in her farm house on the cot. There were marks of strangulation on her neck. The police immediately prepared inquest panchnamas on both dead bodies and shifted them for post mortem. In the meantime, it was also discovered that the appellant/accused had consumed poison and found lying beside the dead body of minor girl and was shifted by the relatives to the Government Hospital, Ambajogai. During the investigation, it was confirmed that wife- Preeti died due to manual strangulation (throttling) associated with head injury, and minor girl died due to manual strangulation. It was also found that the minor girl was carrying pregnancy of one and a half months. During the investigation, it revealed that the appellant/accused was having illicit relations with minor girl since past few months. When his wife- Preeti came to know about the same, she objected to that relationship. The quarrel took place between appellant and his wife- Preeti, which led to the incident of committing murder of Preeti by throttling at the hands of appellant/ accused. Further, it was also revealed that in order to conceal his guilt and to avoid exposure of pregnancy, appellant/ accused murdered the minor victim as well. The appellant/ accused also wrote a false note by putting

blame on his wife's character and kept it inside her blouse. He then attempted to commit suicide by consuming poison, but somehow he survived.

4. After completion of investigation, the police authorities charge sheeted the appellant/ accused for the charges mentioned above. The learned Trial Judge after conducting the trial, convicted the appellant for committing the offence of murder of his wife, but acquitted him from the offence committed in respect of minor girl.

5. The learned counsel for the appellant vehemently submits that the learned Trial Judge has already acquitted the appellant/ accused from the offence allegedly committed by him in respect of minor girl, by observing that prosecution could not establish the motive as well as fact of sexual intercourse between him and minor girl. Further, it was also revealed through the D.N.A. report that the appellant/ accused was not found to be biological father of the fetus. Further, the Trial Court has also recorded acquittal of the appellant/ accused in respect of his act of committing suicide by consuming poison for want of medical evidence to that effect. He pointed out that there is absolutely no evidence on record

to show that the appellant, who was present in the farm house along with the wife- Preeti at the time of the incident, but the learned Trial Judge by wrongly relying on Section 106 of the Indian Evidence Act, 1872 connected him with the murder of Preeti. He submitted that even the conviction of the appellant for committing murder of his wife is recorded on the basis of hearsay evidence, which is not admissible. He pointed out that there is no evidence about the relation between appellant and minor girl, and therefore, there was no occasion for wife- Preeti to take suspicion over such relation. Even the D.N.A test confirms the fact that accused was not found to be a biological father of the foetus, which the victim girl was carrying. He pointed out that there is no satisfactory evidence in respect of accused being lastly seen in the company of his wife- Preeti at the time of incident. He specifically pointed out that, there was no medical examination of accused to ascertain whether there were external injuries found on his person at the time of alleged resistance. According to him, throttling of two women, without any resistance, is highly impossible. According to him, the learned Trial Judge wrongly inferred that since the handwriting of accused was found similar to the chit received from the person of his wife- Preeti, the accused is author of

crime. The learned counsel for the appellant/ accused even took exception to the evidence of Handwriting Expert and termed his opinion as unreasoned. Therefore, he submitted that the suspicion howsoever grave, cannot replace the truth, and in the case based on circumstantial evidence, the prosecution has to establish each and every circumstance forming a complete chain indicating the guilt of the accused. He further pointed out that the learned trial Judge has observed that motive is not proved in the instant case and, therefore, it is actually beneficial to the appellant/ accused. He pointed out that there was registration of A.D. on the information given by the father of appellant/ accused, but he is not examined by the prosecution. Therefore, no opportunity of giving explanation is given to the accused in respect of the A.D. Thus, he prayed for setting aside the conviction of the appellant. In support of his submissions, he also placed reliance on the following judgments :-

- (i) ***Hanuman Govind Nargundkar Vs. State of M.P.***
[AIR 1952 SC 343]
- (ii) ***Sou. Ranjana Vs. State of Maharashtra***
[2018 (3) A.B.R. (Cri.) 487]
- (iii) ***Rahim Ibrahim Pathan Vs. State of Maharashtra***
[2019(3) ABR (Cri) 63]
- (iv) ***Kameshwar Singh Vs. State of Bihar***

AIR 2018 Supreme Court 1916

- (v) ***Sunil Kundu and another Vs. State of Jharkhand
2013 AIR SCW 2278***
- (vi) ***Sakharam Vs. State of M.P.
AIR 1992 Supreme Court Cases 758***
- (vii) ***Sivaji Chintappa Patil Vs. State of Maharashtra
AIR 2021 SC 1249***
- (Viii) ***Mahindra Vs. Sajjan Galpha Rankhamb
AIR 2017 SC 2397***
- (ix) ***State of H.P. Vs. Jai Lal and Others
AIR 1999 Supreme Court 3318***
- (x) ***Madan Mohan Singh and Others Vs. Rajni Kant &
Another 2010(4) Mh.L.J. (Cri.) 409***

6. On the contrary, the learned A.P.P. strongly opposed the submissions made on behalf of the appellant/ accused. She pointed out that on the testimony of P.W. 2, 3 and 8, the prosecution has established the motive. Moreover, P.W.3 father of Preeti, has also established the motive for killing Preeti, which is for hiding relation between the appellant and minor girl. The learned A.P.P. further submits that, even in absence of motive, conviction can be based on proved circumstances and, therefore, failure of appellant/ accused in giving plausible explanation, as to in which condition his wife died, definitely indicates his guilt. The learned counsel for the informant adopted arguments of learned A.P.P.

7. So far as acquittal of accused in respect of the offence regarding minor girl is concerned, the learned A.P.P. submits that, she was definitely below the age of 18 years, which is proved by P.W. 13 the Headmaster. Further, it is also revealed that the appellant/ accused was found lying beside the dead body of minor girl. Thus, the learned A.P.P. submits that the appellant/ accused is also liable to be convicted for committing sexual intercourse with the minor girl and thereafter causing her murder. In support of her submissions, the learned A.P.P. also relied on following judgments :-

- (i) ***Balvir Singh Vs. State of Uttarakhand***
AIR Online 2023 SC 836
- (ii) ***Chetan Vs. State of Karnataka***
2025 SCC OnLine SC 1262

8. Heard rival submissions and with the able assistance of learned counsel for the accused, the learned counsel for informant and learned A.P.P., we have gone through the record and proceedings, in the light of their respective submissions.

9. It is significant to note that, though the appellant/accused is charged with the offence of committing double murder, but the allegations against him are threefold. Firstly, it is alleged by the prosecution that, three months prior

to 4.10.2016, at village Yelda, Taluka Ambejogai, District Beed, the appellant/accused repeatedly committed rape/aggravated penetrative sexual assault on one minor girl, (who is hereinafter referred to as “ the victim girl”) and made her pregnant. It is also alleged by the prosecution that, during the intervening night of 04.10.2016 and 05.10.2016, he committed murder of victim girl by manual strangulation at village Yelda. Secondly, it is alleged by the prosecution that, in the same intervening night, the appellant/accused committed murder of his own wife Preeti, in his house. Thirdly, it is alleged by the prosecution that, after committing two murders, the appellant/accused also tried to commit suicide by consuming poisonous substance. Admittedly, the appellant/accused has been acquitted by the learned Trial Judge from the offence in respect of the victim girl and for attempting to commit suicide. However, the learned Trial Judge has convicted him for committing murder of his own wife. So far as his acquittal from the offence in respect of victim girl and attempt to commit suicide, the State has filed appeal, alleging that the learned Trial Court failed to appreciate the evidence in respect of the aforesaid allegations, whereas the appellant/ accused is challenging his conviction for the offence of committing murder

of his own wife.

10. In respect of all these charges against the appellant/ accused, the prosecution has examined in all 17 witnesses, and also relied on voluminous documentary evidence. However, to avoid repetition, we would like to discuss the evidence of prosecution in respect of the allegations against the appellant/accused as and when it is required and at relevant time. Admittedly, deaths of victim girls as well as Preeti i.e. wife of the accused being unnatural and homicidal, are not disputed. It has been established in the evidence of Dr. Vishwajeet Pawar, who had conducted postmortem on both the dead bodies, that Preeti died due to manual strangulation (Throttling) associated with head injury, whereas victim minor girl died due to manual strangulation. Though, from the suggestions given to the witnesses in the cross-examination on behalf of the appellant/accused, it appears that, his defence was of total denial, and death of Preeti was possible due to falls on rocks and stone in the hilly area, but apparently such defence is highly improbable.

11. So far as offence in relation to the victim girl is concerned, it is the case of the prosecution that, the appellant

repeatedly committed rape on her, and impregnated her, and ultimately committed her murder, and thereafter tried to finish himself by consuming poison. According to the prosecution, the victim girl was minor and hence the appellant/accused was also charged for the offence punishable under Section 6 of the POCSO Act. Therefore, we would like to discuss the evidence of prosecution witness in as much as it relates to the offence against victim girl, in the beginning.

12. PW-1 is the father of the victim girl, has lodged report in the instant case, which is at Exh. 27. According to his evidence, the victim girl was 16 years of the age at the time of incident, and at the relevant time, the appellant/accused and his wife Preeti were residing nearby to his residence. The victim girl used to graze cattle near the agricultural field of the accused, where the accused was also grazing his bullocks. The informant has deposed that when he came to know that accused was talking to her daughter, he told accused not to do so. According to him, on 04.10.2016, victim went to graze the cattle and at the relevant time, accused was also grazing his cattle. In the night of that day, when he had slept near the heap of corn, while his children were sleeping in the house, victim girl was found missing in

the next morning. Then he went to Ambajogai Police Station to lodge missing report and police asked him to wait for a day. Later on, one Meghraj informed that, victim girl was found dead in the field of the accused. He also found Preeti- wife of the appellant/accused lying dead inside the house, with reddish and blackish marks on her throat. He also gathered from other persons that the appellant/accused was found lying nearby after consuming poison and he was then given water and shifted to hospital. According to this witness, the appellant/accused was having love affair with the victim girl, and from that relationship, victim girl became pregnant, to which Preeti had objected. Thus, to conceal his affair with the victim girl, the accused committed murder of the victim girl as well as his own wife Preeti. He has stated about alleged complaint to the police which is at Exh. 27.

13. The wife of informant, i.e. mother of victim girl has also deposed similarly to him about the incident and additionally stated that, the appellant/ accused and the victim girl had become friends, and the victim girl used to go to the house of accused for charging her mobile handset. It is extremely important to note that, there is no direct evidence against the appellant/accused in respect of offence regarding

the victim girl, but the prosecution has made allegations against him on the basis of circumstances, such as victim girl and accused used to graze their cattle at the same place and therefore, they became friends, and that the victim girl used to go to the house of the accused for charging her mobile handset. Further, the prosecution arrayed the appellant/accused in the instant crime as the victim girl found dead in the agricultural field of father of appellant/accused, and that it was informed that, accused was found lying near the victim after consumption of poison.

14. It is the case of the prosecution that love relationship between the appellant/ accused and the victim girl flourished when they used to graze their cattle in the hilly area, near the farm house of the appellant. However, in the cross-examination of the informant i.e. father of the victim, it has come on record that around 86% of the villagers reside in that hilly area and the nearby area of farm house of the appellant. Many farmers used to graze their cattle. Under such circumstances, the alleged love affair between the appellant and the victim girl would not have gone unnoticed, as rightly observed by the learned Trial Judge. It is also important to note that when father of the victim, in the

morning of 05.10.2016 could not find victim inside the house, he took search through the village. However, when it was case of the prosecution that there was love relations between the appellant and the victim girl, then it appears highly suspicious that the informant did not care to ask the appellant or his parents regarding disappearance of his daughter. Though wife of the informant, in her deposition, stated that they doubted the accused being responsible for missing of their daughter, but she also did not search the farm house of the appellant or inquired with him about her daughter. By this conduct of parents of the victim girl, the story about love affair between the appellant and the victim girl has become highly suspicious and unreliable.

15. According to the prosecution, when wife- Preeti of the appellant got knowledge about love affair between appellant and victim girl, the appellant killed Preeti as well. However, there is nothing on record to show that somebody had seen the appellant and victim girl together, nor the victim had confide with somebody about her love affair with the appellant/ accused during her life time. As such, the fact that victim used to graze cattle near the agricultural land of accused, where the appellant/ accused also used to graze his

cattle, cannot establish that they were having love affair.

16. Further, the prosecution has also claimed that the victim girl often used to go to the house of the appellant/accused to charge battery of her mobile phone. However, the report (Exh.27) lodged by the informant indicates that, there was a foot way passing near to the house of the informant and it was being used by the appellant and his wife- Preeti to approach their house and agricultural field. Therefore, merely by passing through the said way near the house of victim girl, one cannot say that the appellant used to make contact with the victim girl or the victim girl was visiting house of appellant for charging her mobile phone and that these facts are sufficient to establish the fact of sexual relationship between herself and the appellant / accused. It is extremely important to note that the letter (Exh.144), clearly indicates that blood sample of appellant was sent to Forensic Science Laboratories, Vidynagari, Kalina, Santacruz (East), Mumbai for D.N.A. testing along with the D.N.A. sample of victim girl. The report to that effect is at Exh.98 and the result of analysis clearly indicates that the appellant is excluded as biological father of the fetus of victim girl. This conclusively shattered the prosecution case that the appellant impregnated the victim girl

and to conceal the said fact, killed her by strangulation.

17. The learned counsel for the appellant vehemently argued that the learned Trial Court definitely erred in holding the victim girl as major, since the prosecution could not establish the fact that she was below the age of 18 years, at the time of the incident. He pointed out that the learned Trial Court erroneously discarded the evidence of headmaster, according to whom, her birth date was 7.6.2000 and thus at the time of incident she was 17 years of the age. However, when the D.N.A report on record clearly bars the appellant/accused from being the biological father of foetus, then we are not inclined to discuss this aspect, as the evidence of the prosecution fails to establish the alleged sexual relations between the appellant and the victim girl. Thus, the circumstantial evidence on record in respect of the alleged offence of the appellant of committing rape on victim girl and her subsequent killing, is not at all convincing and sufficient. As such, we find it proper on the part of learned trial Judge of acquitting the appellant at least from the offence in respect of victim girl.

18. So far as allegations against the accused in respect

of committing offence under Section 309 of the Indian Penal Code is concerned, the prosecution has claimed that the accused was found lying near the victim girl after consuming the poison. However, P.W.-17 Dr. Rameshwar Kothule has specifically deposed that when on 5.10.2016, he was attached to S.R.T.R Medical College and Hospital, Ambajogai as Chief Medical Officer, the appellant was brought in the said hospital with history of consumption of unknown poison and with complaints of vomiting and headache. The appellant was then forwarded to the Medicine Department for further opinion and admitted in Ward No.18, and subsequently discharged on 10.10.2016. Though this witness issued M.L.C. certificate (Exh.133), but in the cross-examination itself, this witness admitted that the gastric lavage of the appellant though collected, but was not forwarded for the chemical analysis. He has also stated that symptoms and tests of the accused were found normal and therefore, could not opined whether the appellant had consumed poison. Thus, such type of evidence coming from expert witness has definitely falsified the story of the prosecution that after killing wife- Preeti as well as victim girl, the appellant also tried to commit suicide by consuming poison. The prosecution has examined one Khandu Baliram

Karnal, (P.W.-6) being an adjacent agriculturist to establish the fact that accused was lying near the dead body of the victim. However, this witness has denied the said fact. Moreover, one another agriculturist Pralhad Ganpatrao Khodve (P.W.-7) has also denied that he saw appellant and the victim speaking to each other. He further denied that accused was found lying near the dead body of the victim and confessed before him about consumption of poison. In the cross-examination of these witnesses nothing favourable to the prosecution has been elicited. There is no direct evidence to the fact that accused was found lying near the victim girl at the relevant time and therefore, evidence of parents of the victim as well as father and brother of Preeti, which is in form of hearsay evidence about the said fact, is not admissible. Therefore, the case of the prosecution as regards the attempt to commission of suicide by the appellant also fails.

19. So far as charge against the accused for committing murder of his own wife- Preeti is concerned, it has already come on record that death of Preeti was homicidal due to manual strangulation (throttling) associated with head injury. For this charge, the case of prosecution is entirely based on

circumstantial evidence only. There is no direct evidence of any eye witness in this regard. It is significant to note that the appellant took defence that he along with his parents and wife-Preeti were residing jointly in village Yelda and on 04.10.2016, he had gone to the fields of Ganpati and Mauli mainly the parental uncles of Preeti, at Sonhivra, Taluka Parali, District Beed. He then performed agricultural activities there for the whole day and then stayed in the field of Mauli in the night. Further, according to him, on 05.10.2016, when he returned back to Yelda, no one was there and therefore, he went to the field and then came to know about the death of Preeti as well as the victim. Thus, he took the defence of alibi that he was not present at the spots of incidents at the relevant time. However, to establish such alibi, the appellant did not examine his parents to establish that he and Preeti were jointly residing with them. He also did not examine either Ganpati or Mauli to establish the fact that during the intervening night of 04.10.2016 and 05.10.2016, he was with them. Therefore, mere statement of the appellant/ accused is not sufficient to establish the aforesaid plea of alibi.

20. The case of the prosecution in respect of murder of wife -Preeti is based on circumstantial evidence. Here the

learned counsel for the appellant/ accused relied heavily on the judgments in cases of **Hanuman Govind Nargundkar and another Vs. State of Madhya Pradesh, [A.I.R. 1952 Supreme Court 343]** Bombay High Court in **Sou. Ranjana Vs. State of Maharashtra [2018(3) ABR (Cri)487]** and **Rahim Ibrahim Pathan Vs State of Maharashtra, [2019 (3) ABR (CRI) 63]** wherein the Hon'ble Apex Court has discussed the scope of circumstantial evidence and its appreciation. It has been laid down that in order to invoke the provision of Section 106 of the Indian Evidence Act, 1872 prosecution ought to have brought on record the evidence of last seen together or presence of accused at occurrence. It is also held that suspicion however grave may be, cannot be a substitute for proof. Further, motive assumes much importance in the case based on circumstantial evidence. It has been observed in the case of Rahim (supra) that Section 106 of the Indian Evidence Act is not intended to relieve the prosecution from its burden to prove the guilt of the accused beyond reasonable doubt and if there is no positive evidence that at the time of incident, husband and wife were last seen together in the house, the inference drawn by the Sessions Court in respect of guilt of accused become erroneous and illegal. Thus, from the

aforesaid observations, a clear settled position emerges that in the case based on circumstantial evidence, the prosecution must prove each and every circumstances independently pointing towards the guilt of the accused. There is no dispute about the aforesaid settled principle. However, on going through the impugned judgment, it is evident that the learned trial Judge based conviction against the appellant on the following circumstances

- (i) Preeti was found dead in the farm house shared by herself and the appellant.
- (ii) She died due to manual strangulation and therefore, her death was homicidal.
- (iii) The appellant, who failed in establishing the plea of alibi was very well present in the house.
- (iv) The appellant could not explain satisfactorily about the cause of her death, as his plea of alibi remained unproved.

21. The learned counsel for the appellant thus heavily relied on the fact that no evidence has come on record from any witness that they actually saw the appellant and his wife-Preeti in their house at the time of incident. Admittedly, no such witnesses are forthcoming in the instant case. However,

it is the case of the prosecution that police had seized one chit near the dead body of Preeti and this fact has been duly proved by the investigating officer Ashok Latkar, (P.W.15) by deposing that he prepared spot *panchnama* Exh.23, wherein it is mentioned that one chit at article 'A' and one ball pen, were found near the dead body of deceased -Preeti. Though, one witness namely Subhash Chopde, (P.W.-9) had proved the specimen handwriting *panchnama* Exh.75, wherein specimen handwriting of the accused/ appellant was obtained, but it has been also revealed that the said specimen handwriting of the appellant was not sent to the handwriting expert for its comparison with the chit found near the dead body of Preeti. However, as per the evidence of Babasaheb Misal (P.W.-10) it is established that Tahsildar, Beed directed him to act as panch for collecting specimen handwriting of accused. He has specifically deposed that accused/ appellant wrote on six blank pages in their presence and those six papers were seized under *panchnama*. Nothing adverse has come on record in his cross-examination. The evidence of P.W.-11 Sanjay Kathar i.e. the Handwriting Expert indicates that he found similarities in the disputed handwriting in chit article 'A' and subsequent handwriting Exh.83/1 to 83/6 obtained from the appellant/

accused under aforesaid *panchnama*. Those similarities are recorded in his statement of reasons, which is at Exh.86. Thus, it has been established that the disputed handwriting in chit at article 'A' (Q-1) was written by the writer, who wrote specimen handwriting Exh.S/1 to S/6. Thus, on the basis of this evidence, inference can safely drawn that it was the appellant/ accused, who had written the chit article 'A'. It is to be noted that finding of such chit in the handwriting of the accused near the dead body of Preeti clearly indicates that the appellant/ accused was present in his farm house along with deceased- Preeti. Further, the said chit was also written on the torn photocopy of S.S.C. Certificate of the appellant itself. Therefore, there is no plausible explanation coming from the appellant/ accused as to how his important personal document was used for writing the said chit.

22. It is to be noted that to get the aid of Section 106 of the Indian Evidence Act, it is not necessary in all cases that somebody must see the accused and the deceased together lastly, but the finding of chit near the dead body in the handwriting of the accused, can also be a circumstance showing his presence with the deceased, at the time of the incident. Therefore, considering this aspect, it can be inferred

that prosecution has definitely established the presence of the accused with the deceased. Once such presence of the appellant is established, then as per the Section 106 of the Indian Evidence Act, the appellant is under obligation to offer plausible explanation in what circumstances, the death of deceased- Preeti took place.

23. As per Section 106 of the Indian Evidence Act, it is burden cast upon the accused to offer cogent explanation in respect of the facts, which are specially within his knowledge. The accused simply cannot get away by keeping mum or offering no explanation. Though, it has been observed by the Hon'ble Apex Court in the case of **Sivaji Chintappa Patil Vs. State of Maharashtra [AIR 2021 SC 1249]** that false explanation or non-explanation cannot be used as a link to complete the chain of circumstances against the accused, but as per the observations of Hon'ble Apex Court in the case of **Chetan Vs. State of Karnataka (2025 SCC OnLine SC 1262]**, if the prosecution has succeeded in proving the fact from which reasonable inference can be drawn regarding death, then it is the responsibility of the accused to offer plausible explanation in respect of his innocence. Therefore, when the prosecution has established the chain of

circumstances, as observed by the learned Trial Judge and discussed earlier in this judgment, it is the appellant, who is supposed to establish his innocence, by offering plausible explanation.

24. In the instant case, admittedly, appellant and his wife- Preeti were residing in the farm house together. Further, by way of the chit at article 'A', the presence of appellant was also established with the deceased, at the time of incident. There were no signs of dacoity or theft committed in the farm house of the appellant and there were no signs either an intruder or third person had entered inside the said house for committing the alleged act. The appellant also did not examine his parents to establish that he was not residing in the farm house, but resides in the village itself. Moreover, the evidence of father and brother of deceased -Preeti also indicated that the appellant and deceased Preeti were residing in the said farm house and the same remained unchallenged.

25. Thus, it appears that the appellant has definitely failed to prove his defence of alibi. Moreover, all the circumstances in the case of death of Preeti, are pointing towards the guilt of the accused/ appellant only and therefore,

conviction recorded by the learned Trial Judge, by considering all these things, definitely appears proper. As such, we find no reason to interfere with the impugned judgment and order. Resultantly, both the appeals are dismissed.

(MEHROZ K. PATHAN)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

Ysk/