



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

CRIMINAL APPEAL NO.51 OF 2024

Dadarao Bhaurao Kolhe
Age: 65 years, Occ: Agril
R/o: Kelgaon Tq. Sillod,
Dist. Aurangabad.

... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
The Police Station Sillod (R),
Tq. Sillod District Aurangabad.

2. XYZ.

... Respondent

....

Ms. Anagha V. Rotte, Advocate for Appellant
Mr. N. S. Tekale, APP for Respondent / State
Mr. R. N. Chavan, Advocate for Respondent No.2 (Appointed)

....

**CORAM : NITIN B. SURYAWANSHI &
SANDIPKUMAR C. MORE, J.J.**

**RESERVED ON : 12th JUNE, 2025
PRONOUNCED ON : 01st JULY, 2025**

JUDGMENT : [PER NITIN B. SURYAWANSHI, J.]

1. Appellant / accused is convicted by the learned Additional Sessions Judge (Court No.6), Aurangabad, in Sessions Case No.265/2018, for offences punishable under Sections 302, 201, 376(f), 376(n) and 506 of the Indian Penal Code and is sentenced to suffer imprisonment for life.

2. The prosecution case, in short, is that accused is resident of village Kelgaon, Tq. Sillod, District Aurangabad, where he

resides along with his wife, son Prabhakar, daughter-in-law and grand children. Land Gut No.438 at Adharwadi road within the limits of village Kelgaon belongs to him. In the said agricultural land a storehouse of two rooms is situated (hereinafter referred to as 'wakhar'). Accused has three sons namely Prabhakar, Shriram and Jairam. Prabhakar who is his elder son, is residing with him. His younger sons Shriram and Jairam are residing at Surat. Accused and his son Prabhakar used to sleep in wakhar in the night.

On 14/07/2018, at 08:30 p.m. accused went in the field for sleeping. Prabhakar followed him later. In the morning accused came home and told that Prabhakar did not come in the agricultural field. When his family disclosed him that Prabhakar had followed him, he said that Prabhakar did not come to the field and he does not know whether he was taken away by a thief or ghost. Accused then tried to call Prabhakar on his cellphone, but his cellphone was switched off. Accused then along with villagers Rameshwar and Shriram Shinde took search of Prabhakar in the vicinity of Kelgaon and nearby places. Inquiry was also made with the relatives, but they told that Prabhakar did not visit them. At about 02:00 p.m. accused went to Sillod (R) Police Station and lodged missing complaint (Exhibit-47) stating above facts and giving details of the clothes worn by Prabhakar, his age, colour, height and mobile number used by him. The said complaint is registered at Missing Complaint No.12/2018 and it's investigation was handed over to

Police Naik Dandge, Police Sub-Inspector. He obtained SDR and CDR of mobile number of Prabhakar and found that in the night of 14/07/2018 mobile location of Prabhakar was at Kelgaon itself. He then inquired with the accused, wife of Prabhakar, mother of Prabhakar and maternal uncle of Prabhakar. After recording their statements, he thought it necessary to inspect the wakhar. He then handed over investigation papers of the missing complaint to ASI Savle, PW6, on 23/07/2018. On that day, PW6 carried out inspection of wakhar in the presence of two panch witnesses. There he found one axe, one white colour full sleeves shirt, one white trouser and one plastic bucket stained with blood. Blood stains were also noticed on the wall and floor of the wakhar. He seized the said articles and sample of blood stains by drawing spot panchanama (Exhibit-14). On the next day, he interrogated wife of Prabhakar (for short 'victim') and the accused, and came to know that accused had illicit relations with the victim. The victim disclosed that, by giving threat that he will kill Prabhakar accused used to establish physical relations with her. PW6 interrogated the accused and accused showed his willingness to show the dead body of Prabhakar and confessed the killing of Prabhakar and burying his dead body under the garbage heap. Thereafter, Taluka Executive Magistrate and two panch witnesses were called. Clothes of the accused were seized. His memorandum statement was recorded wherein he has stated that he is ready to show the dead body. Accused led them to his

agricultural land and then to the garbage heap and stated that the dead body of Prabhakar is buried there by him. The dead body was exhumed by drawing detail panchanama. As the dead body was decomposed, medical officer was called and postmortem was conducted on the spot. Femur bone of the deceased was sent for testing during postmortem. Doctor opined that death is caused due to head injury. Then, blood samples of the accused and his wife were collected for DNA purpose and to get DNA profiling from Regional Forensic Science Laboratory (for short RFSL). The DNA report confirmed that the deceased was biological son of accused and his wife.

3. ASI Savle then lodged FIR against accused vide C.R. No.170/2018, for offence punishable under Sections 302 and 201 of the I.P.C. On completion of investigation charge-sheet was filed. Accused was charged under Sections 302 and 201 of I.P.C. During trial additional charge under Sections 376(f) and 376(2)(n) of I.P.C. was framed against accused. He abjured the guilt and claimed to be tried. In support of the charges, prosecution examined 16 witnesses. Defence of the accused is that only with a view to grab his land his family members are deposing falsehood against him. After recording evidence, learned Additional Sessions Judge, Aurangabad, convicted the accused as aforesaid. Hence, the present appeal.

4. Heard learned advocate for appellant, learned

Additional Public Prosecutor for State and learned advocate appointed to represent respondent No.2.

5. Learned advocate for appellant assailed the conviction stating that there is delay of 10 days in lodging the FIR. Prosecution has failed to prove the last seen theory. According to her, 'last seen' is very weak type of evidence and lastly nobody has seen accused and deceased together. She stated that alleged recovery and discovery at the instance of accused is doubtful. Same panch is used for conducting four panchanamas, that too, the panchanamas are conducted after 10 days and therefore, said evidence needs to be disbelieved. According to her, prosecution has failed to prove motive on the part of accused for commission of the crime. She further submits that, no blood stains were found on the axe which was allegedly used for killing the deceased, so also, on the clothes of accused which accused allegedly wore at the time of incident. Further submission is that there is no iota of evidence in respect of commission of offence punishable under Section 376. The allegations levelled by PW7 victim about commission of rape were liable to be disbelieved as according to PW7 for the first time accused committed rape on her prior to 10 years and thereafter he continued to commit rape and during these 10 years she has not complained about the same to anybody. There is no medical evidence in respect of charge levelled under Section 376. Also,

taking into consideration that the age of accused was 65 years at the time of commission of alleged offence, it is not believable that he was committing rape on the victim. She further submits that for exhumation of dead body and to perform postmortem on the spot no prior permission of the Executive Magistrate was obtained by the prosecution. Therefore, exhumation of the dead body and conducting postmortem on the spot is liable to be disbelieved. She further submits that prosecution has failed to prove it's case beyond reasonable doubt and there are vital lacunae in the chain of circumstances. Hence, benefit of doubt needs to be given to the accused. In support of her submissions, she placed reliance on ***Padman Bibhar Vs. State of Odisha***¹. reported in.

6. Per contra, learned Additional Public Prosecutor supported the impugned judgment and order of conviction. He submits that there was strong motive on the part of accused to commit murder of the deceased, which is brought on record in the evidence of PW7 victim and PW12 wife of accused. Last seen theory of the prosecution is proved in the evidence of PW12 Jijabai, PW7 victim and PW9 Sheshrao Pandit Kolhe. So also, there is evidence on record to show that mobile tower locations of cellphones of accused and deceased were found at the spot of incident and this is brought on record in the evidence of PW6, PW11 and PW13/1, who is Nodal Officer. He submits that, in the wakhar blood stained clothes of

¹ 2025 SCC Online SC 1190

deceased, quilt on which he was sleeping, the weapon used in the crime i.e. axe and bloodstains were found. According to him, conduct of the accused is required to be noted that he has raised false alarm that deceased did not come to wakhar in the night. His further conduct of not going along with the villagers for searching the deceased and staying back at the wakhar also raises doubt against him. By filing missing report he has tried to mislead the investigation machinery. At his instance, the dead body was recovered. He submits that there is no delay in registering the crime. According to him, since Naib Tahsildar was present at the time of exhumation of dead body and he is panch of the panchnama of exhumation of dead body, there is no merit in the submission of accused that in absence of permission from competent authority, the evidence of exhumation of dead body of Prabhakar from the spot should be disbelieved. The DNA reports further supports the prosecution case. He, therefore, submitted that the Trial Court has properly appreciated the evidence and has rightly convicted the accused. Complete chain of circumstances is proved by the prosecution, which points towards the involvement of accused in the present crime. There is no merit in the appeal and the same may be dismissed. In support of his submissions, he relied on ***Trimukh Maroti Kirkan Vs. State of Maharashtra***².

7. Learned advocate for respondent No.2 victim adopted

² (2006) 10 SCC 681

the arguments of learned Additional Public Prosecutor. He further submits that conduct of the accused needs to be noted. In reply to question No.89 of his statement under Section 313 of Cr.P.C., he has stated that his family members are telling lies with a view to grab his land. He submits that PW7 victim has deposed in her evidence about threats given to her and only after death of her husband she has disclosed about commission of offence under Section 376 by the accused. The conduct of accused saying that deceased was taken away either by ghost or thief needs to be taken as additional circumstance against accused. He further submits that the victim being rustic village lady would not make allegations of rape against her own father-in-law unless they are true.

8. Heard learned advocate for accused / appellant, learned Additional Public Prosecutor for State and learned advocate for respondent No.2 at length. With their assistance, we have perused the record.

9. Indisputably, the present case is based on circumstantial evidence. While convicting accused, Trial Court has relied upon the following circumstances:

- (i) Motive;
- (ii) Conduct of the accused in giving false information and misleading the investigation;
- (iii) Strained relations between accused and deceased;

- (iv) On 14/07/2018 accused and deceased both went to the field for sleeping as usual;
- (v) Last seen together theory;
- (vi) Human blood found at wakhar, so also weapon used in the murder, blood stains on the clothes of accused;
- (vii) Incriminating articles seized from the spot of incident and blood stains found on the same;
- (viii) Memorandum statement of accused under Section 27 of the Indian Evidence Act, leading to recovery of the dead body of deceased;
- (ix) Homicidal Death;
- (x) Dead body was exhumed at the instance of accused after recording his memorandum statement;
- (xi) No explanation on the part of accused about unnatural death of deceased;
- (xii) Medical evidence;
- (xiv) CDR and SDR;

At this juncture, it is necessary to appreciate the evidence led by prosecution and see whether prosecution has proved the above circumstances.

10. Prosecution has examined victim PW7, she has deposed that she used to reside along with her mother-in-law, father-in-law, her three children i.e. two sons and one daughter and husband at

Kelgaon. They all used to do agricultural work. Agricultural land belongs to them. In the agricultural land two rooms are constructed and the said place is called as wakhar. They used to store agricultural equipments and cattle in the wakhar. Their residential house is at village Kelgaon, where she, her mother-in-law and two children used to sleep. Her husband and father-in-law (accused) used to sleep in the agricultural field.

The incident took place when her daughter was three years old. At that time, she had gone to the agricultural field and her daughter was at home along with her mother-in-law. Her husband had gone to other village and accused was in the agricultural field. She went in the agricultural field for keeping lunch in the wakhar. At that time, accused raped her and threatened that if she disclose it to anybody else, he will kill her. Thereafter under the same threat, repeatedly accused used to keep physical relations with the victim. One day when she went to wakhar for keeping lunch, accused was there and her husband was coming there from the agricultural field. At that time, she disclosed her husband that accused is forcibly keeping physical relations with her. Since then, relations between her husband and accused were strained and they were not talking to each other. She told her husband that she does not want to stay in their house. Her husband told her that he is the elder son and she should not insult him in front of the family members. She told him that they will build a new house and stay

separately along with their children.

She further deposed that the incident took place prior to four years. That day the accused, her husband and her brother Shriram (PW8) were weeding in the agricultural field. So also, she, her mother-in-law and one daily wager lady were working in the field for the entire day. In the evening they came back, cooked food and they all ate it. Thereafter, the accused went in the field for sleeping and after that her husband also went to sleep in the field. In the morning accused came home and stated to her that deceased did not come in the field. She told him that deceased had followed him to the field. At that time, accused said that her husband did not come in the field and he was taken away by thief or ghost. Thereafter, accused went in the field and started saying that Prabhakar is lost. Search was undertaken in the field and at the relatives, however, her husband could not be found. Therefore, accused gave missing complaint in the police station. Prior to the incident accused had told her that "I will kill your husband and then you will be mine". She told him that she needs her husband. On Akhadi Ekadashi they were crying at their house and accused and her sons Shiva and Ankush had gone in the field. Her son Ankush came from the field to take away snacks and went to the field carrying snacks. Then he returned from the field and told that police have come in the wakhar and blood is spread there. He was in frightened condition. On the next day police called her, her mother-

in-law and accused in police station. They went to the police station. Police inquired with them. She disclosed to the police about forcible sexual intercourse by the accused and threats given by him.

11. In cross-examination, PW7 victim admitted that the agricultural field was in the name of accused. Till her husband was alive they had not separated. Her husband was of a quiet nature and he used to talk less. She admitted that she and her husband wanted their share in the agricultural land and get separated from the family. She also admitted that accused was not ready to give share to them. There was quarrel between her husband and accused on account of their separation. She, however, denied that because of that quarrel accused was not talking with her husband. She further deposed that since her husband went missing till his dead body was found, accused did not leave the field. She admitted that she did not tell police, when for the first time accused established physical relations with her and at that time her husband had gone to another village. She admitted that when she disclosed her husband that accused has forcibly kept physical relations with her, at that time her husband told her not to insult him in front of his brotherhood in his house. She told her husband that “we will construct separate house and live separately with our children”. She admitted that she and her husband wanted their share in the agricultural land. She denied that her husband had left home and

the dead body found in the garbage heap was not of her husband. She denied that she does not know what was written by the police in the statement and the said statement was not read over to her. She also denied that police had threatened her that if she does not give evidence as per the statement recorded by them, then they will make her accused. She denied that accused never forced her in physical relations.

12. Prosecution has examined PW12 Jijabai, wife of the accused and mother of the deceased. She deposed that at her house accused, her son Prabhakar, his wife and his children used to reside. Her two sons are residing at Surat along with their family. They have agricultural land and wakhar at Wadiraod. Her entire family jointly cultivates the land. The incident took place five years prior to the day of Akhadi Ekadashi. On the date of incident accused and deceased went for sleeping at the wakhar. On the next day, at 6:00 a.m. in the morning accused alone came home and said that Prabhakar was not found and he did not come for sleeping in the field. Villagers and relatives searched for Prabhakar. On that day police locked the wakhar and took away accused. Thereafter police found Prabhakar's dead body buried under the garbage heap. Accused was arrested and after conducting panchanama of dead body, funeral was performed. Seven to eight days after the incident she was brought to the Government hospital at Aurangabad and her

blood sample was taken there. She put her thumb impression on it. She proved the identity form (Exhibit-72) issued by the RFSL (Regional Forensic Science Laboratory).

13. In cross-examination PW12 admitted that when accused was staying with them, he was *Karta* of the family. He used to keep all the money with him. If anybody wanted money, they used to demand from accused. She admitted that whenever such demand was raised, accused used to get annoyed. Because of the same, Prabhakar and his wife wanted to reside separately. Accused was not permitting them to reside separately. Prabhakar wanted his share in the agricultural land and accused had denied the same.

14. PW9 Sheshrao Pandit Kolhe is the villager who met deceased on 14/07/2018 between 08:00 p.m. to 08:30 p.m. At that time, he was standing near the bus stand situated in front of Maruti Temple at Kelgaon. Deceased came there, he asked deceased whether he had his dinner. Deceased told him that he had his dinner and asked PW9 whether he had his dinner. When PW9 asked deceased as to where he is heading, deceased told that he is going in the field. Thereafter deceased went to his field and PW9 went to his home. On the next day, PW9 learnt that Prabhakar is missing.

In cross-examination PW9 stated that he is not in a position to say whether deceased went to his field or somewhere

else. Prabhakar asked him whether he had his dinner is proved to be omission. He could not explain as to why the said fact is not mentioned in his police statement.

15. Prosecution has examined PW1 Santosh Dagdu Jadhav, who is panch to the spot panchanama. He deposed that he was called by police on 23/07/2018 at about 04:30 p.m. to 05:00 p.m. at the field of accused. Ravindra Chouthmal was another panch witness present there. The spot of incident was shown by the brother of deceased namely Shriram. It was one house having two rooms. Both the rooms were locked. Shriram unlocked both the rooms, panchas and police personnel entered the said rooms and police inspected the said rooms. One iron axe having blood stains, one full sleeve shirt having blood stains, one white colour trouser with blood stains and one red colour plastic bucket with blood stains were found on the spot. These articles were seized by the police and spot panchanama cum seizer panchanama (Exhibit-14) was prepared.

16. Prosecution has examined PW2 Vitthal Trimbak Rathod. He deposed that on 24/07/2018 at about 01:45 Hours, he was called at Sillod (R) Police Station. At that time Siddharth Dandge, Talathi, was present along with them as a panch. Accused was present in the police station. Clothes on the person of accused i.e. white colour shirt having four buttons and white payjama were seized in their

presence vide Panchanama at Exhibit-29. Thereafter, accused agreed to show the spot where he had buried the dead body. Then the memorandum statement of accused was recorded and they went along with the accused and police, accused was leading them. He took them to Gut No.438 owned by him and asked to stop the vehicle. One wakhar was there. They all went near wakhar. Then accused pointed out the garbage heap and disclosed that he has buried dead body there. Thereafter four persons from the village were called for digging that place. After digging the said spot at the depth of 3 feet, one dead body was found. Accused told that this is the dead body of the deceased Prabhakar. The dead body was in decomposed condition and only skeleton was there. Doctor was called, who removed organs of the body. After removing all the organs of the body panchanama of the dead body (Exhibit-30) was prepared. The same was read over to them and they signed it. Thereafter, panchnama of the organs of the dead body and condition of the dead body (Exhibit-31) was prepared.

17. Accused told that clothes of the deceased are concealed by him at a distance of 50 feet from the garbage heap under the heap of maize stalks and he will recover them. Accordingly, they went to the spot shown by accused and one blackish faint and bluish coloured pant having checks and one shirt having bluish lining was recovered from there at the instance of accused.

Thereafter accused disclosed that he has thrown the quilt in Kelna river bed. He then led them to the river. From there accused recovered one quilt in which three stones were tied. These recoveries are made vide panchanama Exhibit-32.

18. In cross-examination PW2 deposed that since last 10 years he is working as Kotwal of village Kelgaon. In his presence accused was not taken out from the lock-up. He was shown clothes of the accused in police station. He made one signature in the police station. The heap of garbage is at open space. It is situated on the side of road and is accessible to all. It is visible to the people on the road. The road next to garbage heap is a busy road. After they reached the spot, within five minutes labours for digging the heap reached as while leaving from Sillod they were informed. He admitted that after dead body was taken out, it was not possible to say whether it was of a male or female human being. Face of the dead body was beyond recognition. He denied that all the panchanamas were prepared at the police station and he and the other panchas put their signature at police station at the same time.

19. Prosecution has examined PW3 Mustafa Akbarshah as another panch. In his presence accused has given memorandum statement under Section 27 of the Evidence Act. He deposed that he is working as Headmaster at Zilla Parishad School, Kelgaon. On 28/08/2018 he was called by the police to act as a panch. Police

introduced them to the accused. Police were questioning the accused in their presence. Accused disclosed that he will show the spot of incident and demonstrate how the incident has taken place. Accordingly, his memorandum statement was recorded. Accused put his thumb impression on the same and the panchas signed it. The said panchnama is at Exhibit-30/1. Thereafter accused led them to his agricultural field and wakhar. Accused demonstrated as to how he committed the crime. He showed the wakhar, the wooden cot (Baz) where he slept, the spot where he had kept axe and the place where he buried the dead body. He also demonstrated as to how he buried the dead body. He also showed the spot where he kept illicit relations with the victim. He pointed out the spot where he had thrown the cellphone of deceased. It was beyond the road. However, the cellphone could not be traced. All this was video-graphed and panchanama (Exhibit-31/1) of the same was prepared which is signed by them. Thereafter they went to the police station. Police obtained all the photos in the pendrive and prepared it's panchanama (Exhibit-32/1). Panchas signed it.

20. In the cross examination PW3 stated that prior to recording of his evidence prosecutor told him to read the panchanama. After reading some portion of panchanama he recollected the entire incident. He was instructed by the prosecution about how the evidence is to be given. He admitted that police had

given him written notice for acting as a panch one day in advance. In the police station Police Officer Vishwas Patil was interrogating the accused and accused was giving replies. It was being written. He admitted that he did not personally talked to the accused and accused also has not talked with him. On seeing memorandum statement (Exhibit-30) he admitted that it is not in question and answer form. He denied that accused did not make his statements and did not demonstrate anything and he is deposing false at the instance of police.

21. Homicidal death of the deceased is proved by prosecution by examining PW4 Dr. Sayyed Aqib Ahesanoddin. He was Medical Officer at PHC Amthana, Tq. Sillod, District Aurangabad. On 24/07/2018 after receipt of request from Sillod (Rural) Police for conducting postmortem of the deceased on the spot. Copy of the inquest panchanama (Exhibit-31) was given to him. On 24/07/218 he conducted postmortem between 04:45 p.m. to 05:45 p.m. Dead body was of a male, aged 42 years, wearing white colour banyan and white colour underwear with vertically placed two red colour strips on side. As the dead body was in advance stage of decomposition and partly skeletonized, surface injuries could not be identified. However, the head and face bones were seen as pieces and appeared injured on cleaning and washing with water. Fractured bones showed infiltration in edges. Details

were mentioned in column No.19.

Skull bones were identified, found in pieces, skull vault was identifiable, temporal and parietal occipital bone was seen. Parietal bone along with part of frontal bone was separated and in one piece found along with other skull bones. Separated parietal bone and part of frontal bone fits properly with the part of skull. Evidence of cut scalp hair attached to skull bone at places was seen. Facial bones and few parts of frontal bone were missing at places. Evidence of blood infiltration at edges showed clean cut edge on left frontal area measuring 6 cm, after cleaning of bones with brush and water. Another large piece having occipital and part of temporal bone was identified with evidence of blood infiltration at edges at places, suggestive of Antemortem injury. Internal surface of occipital bone showed adherence of blackish brown stains at places suggestive of Antemortem blood clot of extra dural haematoma. Lower jaw bones were found in two pieces with empty socket and loose teeth. Femur bone was preserved for DNA profiling and handed over to the police for further investigation.

He opined that cause of death was head injury. Accordingly, he issued postmortem report (Exhibit-38). He also brought on record provisional cause of death certificate (Exhibit-39). Query letter (Exhibit-40) was issued to him by the investigating officer in respect of weapon connecting injuries mentioned by him in column Nos.17 and 19. He replied the said letter on 30/08/2018 by

forwarding his opinion vide letter (Exhibit-41), stating that the injuries mentioned in Column Nos.17 and 19 in postmortem report (Exhibit-38) are possible by the weapon axe seized at the spot. He could not tell the exact time of death of the deceased as the dead body was at advance stage of decomposition and the death was caused prior to 10 to 12 days.

22. In cross-examination PW4 admitted that the dead body was separated in various parts. He did not preserve viscera. He did not refer the deceased for x-ray investigation. He was confronted with paragraph No.7 at page No.312 in Chapter No.13 of Modi's Medical Jurisprudence, Modi a textbook of Medical Jurisprudence and Toxicology, 25th Edition, published by Lexis Nexis, which reads thus,

"In fracture of the skull bones, disorganized clotted blood may be found on their inner plates, or on the surface of the dura mater and on the brain, in spite of its soft and pulpy nature, if decomposition has not far advanced; but the mere effusion of blood on the brain would not be enough to warrant a statement that the fracture was caused before or after death. In doubtful cases, a guarded opinion should be given that the injuries found on the body, if inflicted during the life, were sufficient to cause death and that they might have been caused by such and such a weapon."

He stated that, it is fine that it is written in this text book and he agrees with it, but he has noted in the postmortem report in column Nos.17 and 19 that evidence of blood infiltration at edges after cleaning of bones with brush and water showed clean cut edge on left frontal area measuring 6 cm along with the

evidence of blood infiltration, another large piece having occipital and part of temporal bone was identified with the evidence of blood infiltration at edges at places, suggestive of Antemortem injury. He admitted that for examination of the dead body and for performing postmortem on the spot order of Magistrate is necessary and he did not receive any order to conduct postmortem. He also admitted that for conducting postmortem of dead body received under exhumation, presence of revenue officer is necessary and he has not noted presence of any revenue officer in his postmortem report.

23. PW13 Dr. Baliram Surywanshi, is the Medical Officer who has collected the DNA samples. He deposed that, on 27/07/2018, he was attached to Ghat Hospital, Aurangabad, as a Casualty Medical Officer. On that day he received letter (Exhibit-80) addressed by PSI Patil, Beed, for collecting DNA sample of the accused and his wife Jijabai PW12. Two identification forms and two DNA kits were made available to him. He took consent of the accused and PW12 on the identification form at MLC Register No.16515/BMS/18. He got identification form filled up in the presence of three witnesses. He and panchas signed it. He proved identification form of the accused (Exhibit-81) and identification form of PW12 (Exhibit-72). Thereafter he collected blood samples as per the procedure in DNA kit and sealed it with identification form and handed it over to Police Sonstable S. N. Kale. He also proved three DNA reports of the

samples forwarded by him at Exhibits-82 to 84. As per the report (Exhibit-84) the DNA profile opinion given by the RFSL is follows:

(1) Jijabai D. Kolhe and Dadarao B. Kolhe are concluded to be biological parents of deceased – P.M. No.01/2018

(2) DNA profiles obtained from blood detected on full shirt and femur bone of P.M. No.01/2018 are identical and from one and the same source of male origin.

24. PW13/1 Narendra Suresh Kharve is the Nodal Officer of Vodaphone. He stated that as a Nodal Officer his duty is to provide information as required by Law enforcement agencies. In addition to that he is also required to attend Court summons. The entire information of his company is in server and it has to be collected through the computerized system in the server. Nobody can change the data that is collected from server. In order to get the said information from server they need to put user ID and password. The Nodal Officers are provided with such individual user ID and password. Except Nodal Officer nobody can take out the data from the server. He received letter from the Additional S.P. of Aurangabad, for giving data in respect of C.R. No.170/2018, registered with Sillod Gramin Police Station, by which call detail records, subscriber detail records and addresses in respect of mobile Nos.8007638527, 7875633678 and 7798463997 were called along with certificate under Section 65(b) of the Indian Evidence

Act. The said data was called vide letter at Exhibit-87, for the period from 14/07/2018 to 24/07/2018. Accordingly, the data was provided to the S.P. Office by cross-checking it from server. Mobile No.8007638527 stands in the name of Kolhe Dada Bhaurao (accused). He proved CDR and SDR of the said mobile number at Exhibits-88 and 89. He also proved CDR and SDR of mobile number 7875633678, which was in the name of Kolhe Prabhakar Dada (deceased), at Exhibits-90 and 91. CDR and SDR of mobile No.7798463997, standing in the name of deceased are proved by him at Exhibits-92 and 93. He also proved certificate under Section 65(b) of the Indian Evidence Act, at Exhibit-94. He further deposed that CDRs have decodes of tower and by searching addresses of decodes they can search the address of the subscribers.

He stated that 404270015642229 is the decode of the tower shown in the CDR of the accused and mobile number standing in his name was on the aforesaid decode address from the morning 08:05 a.m. of 14/07/2018 to 11:13 a.m. of 15/07/2018. As per this decode address of the tower location is Gut No.240, at post Kelgaon, Tq. Sillod, Dist. Aurangabad. 404270015642229 is the decode of tower of mobile No.7875633678 shown in the CDR. It is of the deceased. This mobile was located from 08:31 a.m. of 14/07/2018 to 06:29 p.m. of 14/07/2018 on the same decode. Mobile calls from this number were forwarded to other mobile number, as per this decode the tower location is at Gut No.240, Post

Kelgaon, Tq. Sillod, District Aurangabad. He further states that 404270015642229 is the decode of tower of mobile number 7798463997 shown in the CDR, which is of the deceased. This mobile number was located from 09:18 a.m. of 14/07/2018 to 08:45 p.m. of 14/07/2018 on the same decode. This mobile number was not in use after 08:45 p.m. and as per this decode the tower location is of Gut No.240 at Post Kelgaon, Tq. Sillod, District Aurangabad.

Nothing favourable to the accused is brought on record in the cross-examination of this witness.

25. PW8 Shriram Shinde, brother of the victim, is examined by the prosecution to prove the strained relations between accused and deceased. He deposed that he has five brothers and one sister i.e. victim. Deceased and accused used to cultivate their agricultural land. Incident took place prior to four years. On that day, deceased came to his house and told that they want to weed their agricultural field and therefore called him in the field. Accordingly he went to the field for weeding and worked along with the accused and deceased till evening. At that time, accused and the deceased were not talking to each other. He could make it from their behaviour as because of that they were conversing through him. In the evening they went home for tea. Thereafter he went to the house of his father-in-law. On the next day morning, while he

was at his father-in-law's house, accused called him on phone and said that deceased is either engulfed by hurricane or taken away by ghost as he was not seen in the morning at home or at wakhar. His nephew Shiva, son of deceased, called him and told that accused is saying that deceased is neither at home nor in the field. Thereafter he went to their house. People had gathered there. Then he called his brother and informed about the incident. He along with nephew Shiva and accused went to the agricultural field. They did not find deceased at wakhar. Then accused said that let us go home and inform to the villagers. Thereafter, he and his nephew went and informed about missing of the deceased. They went in search of the deceased. However, accused did not accompany them during search. They searched in the surrounding area, well, brooks etc. He felt thirsty, therefore, he went to wakhar. At that time, accused was at the wakhar. He drank water. At that time, he noticed bloodstains below the platform. He asked accused as to whose blood was that. Accused told him that he had spat after consuming Gutka. In the next breath, the accused said that the blood might have fallen from the injury of a dog. At that time, villagers Dhanaji Kolhe and Manjit Dabhade had also come for the search of the deceased, he called them. Accused poured water on the bloodstains and swiped it. Thereafter Dhanaji and Manjit came there and told accused that they wanted to see the bloodstains on platform, but you washed them. They searched Prabhakar on hill, but he could not be found.

On the day of Akhadi Ekadashi, accused was arrested.

In the cross-examination, PW8 deposed that whenever he was called for work, he used to go to the field of accused and as and when he used to go to the field of accused, he used to talk with his sister. He denied that since he was her brother and was staying in the same village, victim used to tell him about her difficulties. When he went for weeding he did not suspect the accused. He could not tell whether accused and deceased were not talking to each other permanently. He admitted that accused had said that wakhar should be inspected. Thereafter they went to search the deceased at other places. Till the deceased was alive, he had never suspected his sister and the accused. After seeing bloodstains he did not feel that he should inform the police. He admitted that Prabhakar wanted to construct a house and reside separately. He did not inquire as to why accused and deceased were not talking to each other. He denied that he is deposing false and after Prabhakar went missing he inspected wakhar and did not find anything suspicious.

26. PW10 Dhanaji Kolhe is the villager who along with Shriram Shinde PW8, Manjit Dabhade and other villagers took search of the deceased. On the day of incident i.e. Akhadi Ekadashi when he was at home, he learnt that deceased had not returned home. Thereafter, they took search of the deceased near well and at other places. He along with other villagers went towards the

wakhar in the field of the accused. PW8 was ahead of them and he called them. Accordingly, he and Manjit went towards the platform of wakhar and asked PW8 as to why he has called them. At that time, accused had poured water on the platform and washed it. PW8 then told them that there were stains on the platform and accused washed the same. When they asked accused as to why he washed the stains, accused said that those stains were of the dog's blood. Thereafter they went elsewhere in search of the deceased.

27. In cross-examination PW10 admitted that when they were proceeding towards the field of accused, PW8 was ahead of them and when he was near the platform of wakhar, they were on the road and there was much distance between them. He admitted that he had no occasion to see the stains on the platform and information about stains was orally given to him by PW8. At that time, he did not suspect accused or anybody.

28. Prosecution has examined PW5 Sheshrao More, Police Naik, who has recorded the missing report lodged by accused on 15/07/2018. At that time he was working as Police Station Officer at Sillod (Rural) Police Station. On 15/07/2018 accused lodged missing complaint (Exhibit-47) stating that his son Prabhakar Dada Kolhe, aged 42 years, had left the house at 08:30 p.m. in the night saying that he is going to the field. He took search, however, he could not be found and therefore, he is lodging the missing report, which is

registered at Missing Report No.12/2018 (Exhibit-47). The extract of the missing complaint is at Exhibit-48. The said information was recorded in the station diary. The extract of the station diary is at Exhibit-49. Investigation of missing complaint was handed over to Police Officer Mr. Dandge.

29. PW6 Sandip Savle, who was working as a Police Sub-Inspector, was handed over the investigation of Missing Report No.12/2018, on 23/07/2018. He deposed that the investigation of said missing case was earlier given to Police Naik Dandage, who had obtained mobile location and inquired with some of the witnesses. Papers of investigating at Exhibits-47, 48, 49 were obtained by him from Mr. Dandage. On perusal of these documents it was revealed that last mobile location of the deceased was at Kelgaon. Therefore, he went in the said village and inquired with the accused. He learnt that missing person used to go in the wakhar at the field for sleeping. He, therefore, visited the wakhar and inspected it. He called two panchas on the said spot. Shriram, brother of deceased, opened the lock of wakhar. Thereafter panchanama of wakhar was conducted in the presence of two panchas. During panchanama they noticed blood stains on the floor, wall and on the containers kept in the room. On minute inspection of the spot, they found blood stains on the axe kept in the corner. Blood stains were noticed on the brownish coloured plastic bucket.

One plastic bucket was kept covered adjacent to the wall, in which one handkerchief and two payjamas were found soaked in the water mixed with washing powder. One of the payjamas had blood stains. Blood stains on the wall were tried to be washed out with cow dung mixed water. So also, near the wall flour was spilled. In that flour also blood was found. One bundle of clothes tied in a Saree was noticed. In that bundle, one blood stained white shirt was found. All these articles and swab of bloodstains were seized and sealed in the presence of panchas and detailed panchanama (Exhibit-14) was prepared. Articles seized on the spot were handed over to the police station along with Muddemal receipt (Exhibit-52).

30. On the next day victim, mother of the deceased and accused came to the police station for inquiry. Separate inquiry was made with the victim and she disclosed that since many years she had illicit relations with the accused and he used to threaten her that he will kill the deceased. Thereafter the accused confessed that he had killed the deceased. Accused was then presented before API Patil. Accused again confessed his crime. API Patil then called Naib Tahsildar and two panchas to the police station. Clothes on the person of accused were seized and his memorandum statement was recorded in the presence of Naib Tahsildar and two panchas. Thereafter they all went along with the accused. Accused led them to wakhar in the agricultural field and pointed out the garbage heap

and told that he has buried the dead body there. Dead body was thereafter exhumed. Since the dead body was decomposed, Medical Officer was called for postmortem on the spot. Inquest panchanama of the dead body (Exhibit-31) was prepared in the presence of panchas. Thereafter, he narrated the steps taken in the investigation and stated that after investigation it was revealed that the accused killed the deceased and with a view to tamper the evidence he buried the dead body under the heap of garbage. Therefore, he on behalf of State lodged the FIR. Accordingly C.R. No.170/2018 (Exhibit-55) was registered for offences punishable under Sections 302, 201 of the I.P.C. The printed FIR is at Exhibit-43. After registration of crime investigation was handed over to PI Patil PW14.

Nothing favourable to the accused is brought on record in his cross examination.

Appreciation of Evidence:-

31. Undisputed facts are that, deceased was son of the accused. Accused and deceased used to go to the field at night for sleeping. Spot of incident i.e. wakhar and the agricultural field stands in the name of accused. On careful scrutiny of the prosecution evidence, we find that prosecution has proved homicidal death of deceased in the evidence of PW4 Dr. Sayyed Aqib Ahesanoddin. Homicidal death is not seriously disputed by the

accused. Strained relations between the accused and deceased are brought on record in the evidence of PW8 Shriram Shinde, who accompanied accused and deceased for weeding on 14/07/2018. He has categorically deposed that accused and deceased were not talking to each other and they were communicating through him. Evidence of PW12 Jijabai also confirms the strained relations between accused and deceased. In her cross-examination she has admitted that accused was against the separation of deceased and victim. He had also refused to give share in the agricultural land to the deceased. Evidence of PW8 and PW12 is further corroborated by the evidence of PW7 victim, who has deposed that when she disclosed that the accused had kept forcible physical relations with her, since then the relations between deceased and accused were strained. They were not talking with each other. She has also deposed that prior to the incident accused had told her that "I will kill Prabhakar and you will be mine". She has also disclosed that accused used to keep forcible physical relations with her and used to threaten to kill her if she discloses it to anybody. From this evidence, prosecution has established motive on the part of accused to kill the deceased.

32. Evidence of PW7 and 12 establishes that the accused and deceased used to go to the field every night and sleep in the wakhar. In the fateful night also they both went to the field for

sleeping. PW9 has proved that deceased met him while he was proceeding to the field for sleeping. Deceased disclosed him that he is going to the field and then went to the field. Thus, the evidence of these three witnesses proves that in the fateful night of 14/07/2018 accused and deceased had gone to the field for sleeping in the wakhar.

33. PW13/1 has proved that in the night of 14/07/2018 tower locations of mobile numbers of accused and deceased were at Gut No.240. This witness has proved CDR and SDR records of the accused and deceased. This further corroborates the prosecution case that in the night of 14/07/2018 deceased and accused had gone to the field for sleeping in the wakhar and they were together.

34. The wakhar was inspected on 23/07/2018 and bloodstains were found in the said wakhar. The bloodstains found on the wall were washed with cow dung mixed water. The murder weapon i.e. axe and incriminating articles like brownish colour plastic bucket with blood stains, one payjama and white colour shirt with blood stains seized from the spot also corroborates the prosecution case.

35. As per the memorandum statement (Exhibit-30) recorded under Section 27 of the Indian Evidence Act, accused has shown the spot where dead body of deceased was buried. From the said spot dead body was exhumed. At the instance of accused

bloodstained clothes and quilt were recovered from the respective places shown by him. These circumstances further corroborate the prosecution case that accused is author of the crime.

36. Scientific evidence in the form of DNA reports at Exhibits-82 to 84 further supports the prosecution case that dead body was that of deceased Prabhakar who is biological son of accused and PW12 Jijabai.

The conduct of accused needs to be noted here that he lodged false missing report thereby misleading the investigation. He told the family members, witnesses and villagers that Prabhakar is taken away by thief or ghost, he washed blood stains on the platform of wakhar when they were noticed by PW8 Shriram and gave false explanation that the stains were caused either due to spitting of gutka or they are of the blood dropped from dog's injury, so also, when all the witnesses and villagers were searching for the deceased, accused did not accompany them and stayed back at wakhar, as is deposed by PW8 and PW10. All these additional circumstances point to the guilty mind of accused and his complicity in the crime.

37. Prosecution has proved charge under Section 376 of the I.P.C. in the evidence of victim PW7. Evidence of PW7 is assailed stating that the allegations of rape are made belatedly, though as per the victim accused was committing rape on her since last more

than 10 years, at no point of time these allegations were made, so also, there is no medical evidence supporting the charge of rape. No rustic village lady would put her prestige at stake by making false allegations against her own father-in-law unless there is substance in such allegations. Therefore, merely because the allegations were made at later point of time, her evidence is not liable to be disbelieved. Nothing favourable to the defence is elicited in the cross-examination of the victim, and/or her credit is not impeached. Therefore, we find that her evidence is cogent, reliable and trust worthy.

38. Prosecution has successfully proved that the accused and deceased had gone to the field for sleeping in the wakhar in the night of 14/07/2018 and accused has killed the deceased during the said night and buried the dead body under garbage heap.

In **Trimukh Maroti Kirkan** (supra), the Hon'ble Apex Court has held,

"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an

accused to offer any explanation.

.
.

21. *In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of Tamil Nadu Vs. Rajendran, (1999) 8 SCC 679; State of U.P. Vs. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300; State of Maharashtra Vs. Suresh, (2000) 1 SCC 471; Ganesh Lal Vs. State of Rajasthan, (2002) 1 SCC 731; Gulab Chand Vs. State of M.P., (1995) 3 SCC 574]"*

Record indicates that all the incriminating circumstances were put to the accused, however, he has failed to offer explanation and thus has miserably failed to discharge the burden cast upon him under Section 106 of the Indian Evidence Act. This needs to be taken as an additional link in the chain of circumstances to make it complete against the accused.

39. In ***Padman Bibhar*** (supra) it is held that the evidence of last seen together is not sufficient enough to convict the accused.

In the present case, prosecution has proved the complete chain of circumstances beyond reasonable doubt, which unerringly points to the guilt of the accused. As per the evidence on record, the only conclusion can be drawn is that the accused is author of the crime and is guilty of committing murder of his own

son in the fateful night. Therefore, this ruling does not help the case of accused.

40. Trial Court has properly appreciated the evidence and has passed a well reasoned judgment while convicting the accused. We do not find any merit in the appeal and the appeal stands dismissed.

41. Fees of the learned advocate appointed to represent respondent No.2 be quantified as per the rules and shall be paid by the High Court Legal Services, Sub-Committee, Aurangabad, within a period of four weeks from the date of uploading of this judgment.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)