



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 399 of 2020

Parshuram Shankar Uike
Aged about 32 years, Occ. Labour,
R/o. Bhurudhana, Tq. Bhaidehi,
District Baitul (M.P).
(Presently lodged at Central Prison,
Amravati)

... Appellant

- Versus -

The State of Maharashtra, through
Police Station Officer, Police Station,
Morshi, District Amravati.

... Respondent

Ms. F. N. Haidari with Mr. N. A. Badar, Advocates for the appellant
Mr. S. A. Ashirgade, APP for the State/respondent

**CORAM : ANIL L. PANSARE AND
Y. G. KHOBRAGADE, JJ.**

Date of reserving judgment : 08-10-2025
Date of pronouncing judgment : 17-10-2025

JUDGMENT (Per : ANIL L. PANSARE, J.)

The appellant is aggrieved by the judgment and order passed by learned Additional Sessions Judge, Amravati in Sessions Trial No. 273/2018 whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer life imprisonment and to pay fine of Rs. 25,000/-.

2. The appellant carries a blame of committing murder of his wife. The prosecution's case is, however, based on circumstantial evidence.

3. The investigation was set in motion upon information given by one Vivek Subhashrao Raut. According to him, he has agricultural land situated at Village Pardi. He is, as such, resident of Morshi. Fifteen days back, appellant came to him along with his wife, namely, Gajri Uike and asked for work in his agricultural land. The informant employed appellant and his wife and also permitted them to reside in the hut situated in the agricultural land. The couple had a daughter, aged about two and half years.

4. On 21-8-2018, the informant had been to market at Morshi and he met appellant and his wife at around 2.00 p.m. Informant gave appellant Rs. 500/- for marketing. On 22-8-2018, at about 7.00 a.m., when informant visited his agricultural land and went to his hut, he saw appellant's wife lying on the floor. She had sustained bleeding injury on her head. She had expired. The appellant and his daughter were not found in the hut. The informant took a search but could not find them. He made a phone call to Morshi Police Station and informed that appellant had killed his wife due to some domestic reason and ran away with his daughter. Police took note of the information in the station

diary being Station Diary No. 21/2018. Police registered offence vide Crime No. 337/2018 under Section 302 of the IPC. The investigation was done which includes visiting spot, performing inquest, conducting postmortem through doctor, recording statement, arresting accused, recovering weapon i.e. axe, seizure of clothes of deceased as well as accused as also the blood samples etc. As per postmortem report, the cause of death of deceased was “hemorrhage and shock due to the head injury”.

5. The investigation culminated into filing charge-sheet under Section 302 of IPC. The charge was framed. The appellant pleaded not guilty. The prosecution examined five witnesses. The defence of appellant was of total denial. The appellant, however, did not examine any witness in defence. The trial Court, after having considered the evidence and after having heard both sides, found the appellant guilty of the offence and sentenced him to suffer imprisonment for life.

6. The appellant is aggrieved by aforesaid finding and has filed the present appeal.

7. We have heard Ms. F. N. Haidari, learned counsel for the appellant and Mr. S. A. Ashirgade, learned Additional Public Prosecutor

(APP) for the State/respondent. We have gone through the impugned judgment, evidence, the documents and other material placed on record. We will refer to the same to the extent necessary to decide following points that arise for our consideration. We have recorded our findings thereon for the reasons to follow.

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Has the prosecution proved that deceased Gajri met an homicidal death ?	In the affirmative.
2.	Has the prosecution proved that in the intervening period of 21-8-2018 to 22-8-2018, in the hut situated in the field of informant, the appellant caused death of his wife Gajri ?	In the affirmative.
3.	Whether interference is called for in the impugned judgment ?	In the negative.
4.	What order ?	As per final order.

REASONS

As to Point Nos. 1 to 3

8. The points, being interlinked, are decided by common reasoning. The prosecution was under obligation to prove that Gajri suffered homicidal death. PW. 3 Dr. Pallavi Bhagwat has conducted postmortem. The body was brought to hospital at about 12.00 noon.

She found that body was fresh. Riger mortis was present. Following external injuries were noticed.

“1] Contusion present around right eye,

2] Incised wound of size 3 cm x 1 cm x 1 cm about 2cm infront of left ear.

3] Incised wound of size 3cm x 1cm x 1 cm over frontal region about 2 cm above the left supra orbital region.

4] Incise wound of size 9 cm x 1 cm x 1 cm present over parietal region on left side extending from 6 cm above left supra orbital margin, 4 cm above occipital protuberance, brain parenchyma protruding through the wound [vertical wound]

5] Incised wound of size 3cm x 1 cm x 1 cm present over parietal region extending between right and left parietal region above 6 cm above left supra orbital region [horizontally]

6] Abrasion of size 2cm x 2 cm over the elbow joint on extensor surface.

7] Laceration of size 2 cm x 2 cm present on parietal region on left side.

8] Incised wound of size 7cm x 1 cm x 2.5 cm present over back of neck about 5 cm below occipital protuberance region.

[No fracture of underlying structure]

9) Deep burn of size 5 cm x 3.5 cm x 1 cm over the right elbow joint on extensor surface exposing muscles fibres.

10] Fracture of left parietal and temporal bone present on left side, fracture of frontal bone incontinuity present extending left occipital superior most area of size 22 cm x 17 cm on left, 6-5 cm towards right side. Fracture of right parietal bone of size of 4cm x 4 cm present in continuity with left parietal bone.

11] Abrasion of size 3 cm x 3 cm present over back on right side.

9. She also noticed head injury including fracture of right parietal bone. The injuries on deceased's head, forehead and back side were grievous injuries. The injuries were ante-mortem. After conducting postmortem, cause of death was found to be 'hemorrhage and shock due to head injury'.

10. Further, P.W. 2's evidence indicates that Gajri was lying in the hut with bleeding injuries. He had, on previous day, seen Gajri with appellant. Her sudden death with multiple injuries coupled with findings in postmortem report would establish homicidal death. Even otherwise, it is nobody's case that Gajri suffered homicidal or accidental death. Thus, the prosecution has proved that Gajri suffered homicidal death.

11. On the point of appellant's role in committing murder, there is no direct evidence. The evidence of P.W. 2, as noted above, will only show that on 21-8-2018, he had seen appellant and Gajri at 2.00 p.m. On 22-8-2018, at about 7.00 a.m., when he visited agriculture field and the hut, he saw Gajri lying on the floor with blood oozing from her head. Appellant and his daughter were not available in the hut. He took search but to no avail. Accordingly, he lodged report. He identified the appellant to be the same to whom he had employed and

was residing in the hut. In the cross-examination, the defence suggested that appellant had two daughters, to which the witness showed ignorance saying that he is not aware of the elder daughter. The defence then put up a case that appellant was to go out of town after marketing, which theory is denied by the witness. It is then brought on record that when he(PW. 2) used to visit his agriculture land, he had noticed that their cohabitation was smooth. He showed ignorance to the suggestion that appellant had second marriage with Gajri.

12. Thus, in the cross-examination, the defence has brought on record that appellant and Gajri were staying together in the hut and had cordial relations at least from the point of view of PW. 2.

13. Another important witness is PW. 4 Dashan Uike. He is resident of Village Kondwardha. According to him, on the date of incident, Parshuram along with his daughter, aged two and half years, came to his house on motorcycle at about 5.00 to 6.00 p.m. He had brought some articles in white gunny bag. Said articles were kitchen articles, blankets and other articles. He kept his daughter at his (PW. 4's) house by requesting him to let her stay in his house. The appellant had also put gunny bag in his house. He did not speak about

his wife. He took meal and stayed in the house for one night. On next day, he went away to repair his vehicle but did not return back. Since he did not come back, P.W. 4 enquired with the daughter, to which, she said that her father killed her mother.

14. This is how, he (P.W. 4) came to know of death of Gajri. Later on, he came to know that police had arrested appellant. Police came to his house and took the girl. Police also made enquiry with him. Accordingly, he gave his statement. His statement was also recorded under Section 164 of the Code of Criminal Procedure, 1973 (Exhibit 34). In the cross-examination, he denied that appellant told him that his elder daughter is taking education at Nagpur and is residing at hostel and he is going to meet her. He further denied that he had brought articles with him to give it to his daughter. Thus there is nothing in the cross-examination to disbelieve the testimony of P.W. 4.

15. The prosecution is also relying on the evidence of P.W. 1 and P.W. 5 on the point of recovery of weapon at the instance of appellant. P.W. 1 was working as Kotwal. He was called to police station on 22-8-2018. Thus, immediately after the arrest of appellant, the confession under Section 27 of the Indian Evidence Act, 1872 has been recorded.

16. The witness initially deposed about the spot of incident. There is no dispute about the same and, therefore, detailed discussion is not required. He also deposed about inquest panchanama, which also is not really in dispute. On the point of recovery of weapon, he stated that when appellant was present in the police station, he said that he will show the spot where he has concealed the axe. Police and panch followed his instructions to reach the place where the axe was concealed. The appellant took them to Village, Pardi and thereafter in an agriculture field. He took them through kaccha rasta. He proceeded near bushes and removed an axe attached to wooden stick and handed it over to the police. Police seized the axe. The axe had blood stains and it was sealed under panchanama, Exhibit 15. The axe was identified by the witness in the Court as Article A. He also identified the appellant in the Court and said that he is the one who had handed over axe to the police. In the cross-examination, except for putting up a case which the witness has denied, there is nothing to doubt his version.

17. P.W. 5 - Investigating Officer has deposed that the weapon was sent to Forensic Science Laboratory. The report of chemical analysis is at Exhibit 27. The report indicates that the axe (Exhibit 9) was stained with blood of Blood Group AB. The report (Exhibit 28) shows that Blood Group of Gajri was also AB. This is how the recovery of

weapon is connected with the crime. As such, Blood Group of appellant could not be determined as the results were inconclusive. Such status, however, will not have any bearing in the matter in as much it is nobody's case that appellant sustained injuries and, therefore, there is no question of his blood transmitting on axe. In other words, there was no scope to have blood stains of appellant on the weapon i.e. axe.

18. Thus, there is evidence to indicate that the axe recovered at the instance of appellant had blood stains and the blood found on the axe was of same group of deceased Gajri.

19. The counsel for the appellant argued that P.W. 1 at one stage, stated that axe was stained with blood but in cross-examination, he deposed that there was no blood stains. Such evidence will only show confused state of mind of a witness, which would require consideration by taking into consideration all attending circumstances. We may note here, that P.W. 5 maintained that there were blood stains on axe. Further, blood stains were found by the Chemical Analyser and since there is no dispute as regards the seizure and sealing of weapon, there is no reason to give weightage to a single line in the cross-examination of P.W. 1 saying that there was no blood stain on the axe, particularly when in his chief-examination coupled with P.W. 5's evidence and recovery of the axe read with Forensic Science

Laboratory's report indicate that axe was stained with blood and that the blood on the axe was of Group AB.

20. The question, however, is whether the evidence as is led by the prosecution is sufficient to prove nexus of appellant with crime.

21. The evidence of P.W. 2, if read with evidence of P.W. 4, what transpires is that on 21-8-2018, P.W. 2 had seen appellant and his wife together at around 2.00 p.m. Thereafter on next day, on 22-8-2018, at about 7.00 a.m., when P.W. 2 visited his agriculture field, he noticed that appellant's wife was lying on the floor in the hut and blood was oozing from her head. He did not find appellant and his daughter in the hut despite search. On 22-8-2018, he along with his daughter approached P.W. 4. He has also taken with him kitchen articles. He left his daughter and kitchen articles in the house of P.W. 4. He did not inform P.W. 4 about his wife. He was, on the same day, arrested by police. Such a conduct is something that is being highlighted by learned APP to attract the appellant's duty to prove fact which are specially within his knowledge.

22. Ms. F. N. Haidari, learned counsel for the appellant submits that as per FIR, the incident occurred between 8.00 p.m. on 21-8-2018 to 7.00 a.m. on 22-8-2018. This time gap is writ large to have multiple

reasons for the occurrence of death of Gajri. As such, she argued that after 2.00 p.m., on 21-8-2018, nobody has seen the appellant and his wife together. She submits that, in such circumstances, where prosecution has failed to discharge its burden to indicate that appellant is responsible for the crime, there would arise no reason for appellant to prove a fact which prosecution failed to show was within exclusive knowledge of appellant. According to her, the prosecution was under obligation to prove that in the intervening night of 21-8-2018 and 22-8-2018, appellant was in the house/hut. Nobody has seen appellant entering his house on 21-8-2018 and, therefore, the expectation of prosecution that appellant should discharge burden under Section 106 of the Indian Evidence Act is without any substance. In support, she has relied upon following judgments.

(i) ***Sawal Das Vs. State of Bihar [AIR 1974 SC 778]*** wherein the Supreme Court held that in a case based on circumstantial evidence, the prosecution must prove the guilt of accused beyond reasonable doubt and if reasonable doubts persist about the chain of circumstances or if there are plausible alternative explanations, such as involvement of other co-accused, the accused cannot be convicted of the charged offence on circumstantial evidence alone.

In the said case, there were more than one accused involved and in that context, the Supreme Court made aforesaid observations

about plausible alternative explanation of involvement of co-accused. Such is not the case here, in the sense, it is neither the case of the prosecution nor of the defence that third person may be involved in the crime.

(ii) The reference was then made to the judgment of coordinate Bench of this Court in the case of ***Sunil s/o Latari Khuje Vs. The State of Maharashtra [2016 ALL MR(Cri) 2212]*** wherein the Court held that in the case grounded on circumstantial evidence, every link in the chain of circumstances leading to the guilt of the accused must be proved beyond reasonable doubt. The defence of Section 106 of the Evidence Act cannot operate unless the prosecution first establishes the presence of accused at or near the crime scene during the relevant time. The Court further held that if initial presence is not proven, Section 106 cannot be invoked to supply that link. Thus, the Division Bench has reiterated the well settled principles of law. We will, however, comment upon the circumstances connecting the appellant with crime a little later. Yet another judgment of the same Division Bench in the case of ***Vilas S/o Janu Kirange Vs. The State of Maharashtra in Criminal Appeal No. 408/2013 dated 28-3-2016*** was referred wherein similar such view has been taken as stated in the earlier judgment.

23. As against, Mr. S. A. Ashirgade, learned APP, in support of his argument, has invited our attention to the judgment of the Supreme Court in the case of ***Kundula Bala Subrahmanyam and anr. Vs. State of Andhra Pradesh [(1993) 2 SCC 684]*** wherein, the Court held that when the evidence particularly circumstantial evidence, such as, dying declarations, medical findings, the conduct of the accused immediately after the incident, and their subsequent absconding, collectively establish a complete and consistent chain pointing to the guilt of the accused beyond reasonable doubt.

24. On the rival contentions, which were also made before the trial Court, it has referred to the judgment of the Supreme Court in the case of ***Sharad Sharda Vs. State of Maharashtra [1984 SCC (Cri) 487]*** wherein five golden principles were laid down in a case based on circumstantial evidence, which read as under :-

“1] The circumstances from which an conclusion of guilt is to be drawn, should be fully established.

2] The facts so established, should be consistent with the hypothesis of the guilt of the accused, that is to say that should not be explainable on any other hypothesis except that the accused is guilty.

3] The circumstances should be of a conclusive nature and tendency.

4] They should exclude possible hypothesis except the one to be proved.

5] There must be a chain of evidence to complete as not to leave any reasonable ground for the conclusion that in human probability, the act must have been done by the accused.”

Thus, what is important is to prove all circumstances from which a conclusion of guilt could be drawn. The facts established should be consistent with the hypothesis of the guilt of the accused, meaning thereby it should not be capable of any other possibility except the guilt of accused. Other important ingredient is that the circumstances should be of a conclusive nature and tendency ought to have only one possible hypothesis. Lastly, the chain of evidence should be such so as to lead to a sole conclusion that the act must have been done by the accused. This proposition of law will take into account the judgments cited by both the sides, which were cited, but will apply to cases depending on facts and circumstances of a given case.

25. The trial Court then referred to yet another but important judgment of the Supreme Court in the case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra [2006 SAR (Cri) 914]*** wherein while considering the scope of Section 106 of the Indian Evidence Act in the identical circumstances, where offence took place in the dwelling home and where appellant therein did not offer any explanation, as in the present case, as to how deceased received injuries, the Court held that

it is a strong circumstance, which indicates that the appellant is responsible for commission of the crime. The Supreme Court, while dealing with the scope of Section 106 in a case where the offence is committed in secrecy inside a house held thus :-

*“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* - quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*.) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:*

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

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.”

The Court thus held that where the offence is committed inside the privacy of a house, it will be difficult for the prosecution to lead evidence to establish the guilt of accused, if the strict principle of circumstantial evidence is insisted upon by the courts. The Court further held that in such cases, the burden would be of comparatively lighter character and, therefore, there will be corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. Most importantly, the Court held that the inmates of a 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 the accused to offer any explanation.

26. In our view, if the conduct of the appellant is examined on the touchstone of the law laid down by the Supreme Court in **Trimukh's** case, the prosecution has led the evidence which it was capable of. The evidence indicates that appellant, his wife, who were having minor daughter, aged two and half years were residing together in the hut

which is located in the agriculture land owned by P.W. 2. The location as such is remote, in the sense, it is nobody's case that the hut is located at a place where there are other residences as well. The evidence does not indicate that there is possibility of any other person having easy access to the hut. In other words, the hut is not located in densely populated area rather is located in agricultural field. The field is situated at Pardi Shivar, which is at a far distance from Morshi.

27. That apart, the appellant had joined duty 15 days back. There is nothing to show his acquaintance with anybody. Thus there were neither friends nor rivals of appellant. The involvement of third person is, therefore, ruled out. Further, it is not the case of the appellant that he was not present in the house on that day. Thus, there is every reason to believe that on 21-8-2018, after purchasing household articles, the appellant along with his wife went back to their house. On next day, at about 7.00 a.m., P.W. 2 found appellant's wife murdered. The absence of appellant and his daughter in the house is something that would require special attention, given the fact that appellant has not uttered a word about death of his wife. It is nobody's case that in 15 days prior to incident any other person had visited appellant's hut. The appellant and his daughter were not present. They went to P.W. 4's house. The appellant dropped his daughter at his place. He had carried

with him kitchen articles. He did not disclose to P.W. 4 anything about his wife. Such conduct will only indicate his involvement in the crime. In such circumstance, the silence of appellant will only substantiate his involvement in the crime. It is so because in the normal circumstances, if someone's wife is murdered, the husband will raise hue and cry and will make an attempt to first remove the injured wife to hospital for treatment. One would also expect the husband to approach police as well. The least that is expected from the husband is to make an attempt to find out as to who has killed his wife.

28. In complete contrast to such behaviour, the appellant herein has left his wife in the house and in a way, fled away by dropping the minor at the house of P.W. 4. It is a different matter that he was immediately arrested by police but his conduct is extremely suspicious. This is one of the clinching circumstance against the appellant. Another clinching evidence is discovery of weapon at the instance of appellant wherein the discovered weapon contained blood stains having Blood Group of deceased.

29. Thus, what transpires from the evidence is that the appellant and his wife were together at 2.00 p.m. on 21-8-2018 and 22-8-2018 at 7.00 a.m., the appellant's wife was found murdered. There is nothing on record to show that any persons had ever visited

appellant's hut. Thus there was no possibility of any person to enter in hut on the fateful night. These facts coupled with appellant's attempt to flee away by dropping his daughter at P.W. 4's house and by not offering any explanation about the death of his wife is in itself a complete chain of circumstance indicating that except the appellant, none else is responsible for the murder of Gajri.

30. That being so, the argument of appellant that motive is completely absent will be of no help. The trial Court has considered this aspect as well. It has relied upon the judgment of Supreme Court in the case of *Vivek Kalra Vs. State of Rajasthan [2013 SAR (Cri) 421]* wherein the Court held that in the case of circumstantial evidence, where the evidence taken together establishes guilt of accused beyond reasonable doubt, even if motive is not proved, the evidence is sufficient to establish guilt, the accused should be convicted.

31. Thus, the trial Court has considered all attending circumstances and has passed a well reasoned order to render a finding of guilt of appellant. The trial Court has considered evidence in accordance with settled principles of law. No interference is, therefore, called for in the impugned judgment. Accordingly point nos. 1 and 2 are answered in the affirmative and point no. 3 in the negative.

As to point no. 4

32. Having answered point nos. 1 to 3 in the manner herein above, there is absolutely no merit in the appeal. The appeal is accordingly dismissed.

(Y. G. KHOBRAGADE, J.)

(Anil L. Pansare, J.)

wasnik