
(2010) 02 BOM CK 0045
In the Bombay High Court
Case No : Criminal Appeal No. 376 of 2004

Chudaman Shahu

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2010) 112 BOMLR 1000

Hon'ble Judges : P.D. Kode, J;A.P. Lavande, J

Bench : Division Bench

Advocate : U.K. Kalsi and Kanchan Tejwani, for the Appellant; T.A. Mirza, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—By present appeal, appellant/accused has thrown a challenge to judgment and order dated 17.4.2004 convicting him for commission of offence of murder of his paternal aunt Firobai Pardeshi Jagatram Shahu and for causing disappearance of evidence of said offence with intent to screen himself from legal punishment i.e. u/s 302 and Section 201 of IPC and on 1st count sentencing him to suffer imprisonment for life and to pay a fine of Rs. 500/- and i/d to suffer SI for 3 months and on 2nd count to suffer RI for 3 years and to pay a fine of Rs. 500/- and i/d to suffer SI for 3 months passed by learned 6th Ad-hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 553/2000 of said Court. The said trial has arisen out of charge sheet submitted on 22.4.2000 by Parshioni Police Station in the Court of JMFC, Ramtek against the appellant and acquitted accused Anupama @ Munnibai w/o Visaram Mahaling also charged for commission of offences for which the appellant is convicted.

2. The facts in brief leading to the registration of said crime and the prosecution case are as under:

a) Rohitkumar Chandulal Shahu (PW7), his wife Revati and his mother deceased

Firobai were residents of village Teresara, District - Rajnandgaon (M.P.). After death of his father about 20-25 years back, his mother Firobai had married with Pardeshi Jagatram Shahu from village Nanawati, who was having first wife namely Tetlibai and all of them were residing together. Gambhirdas Shahu real brother of father of Rohitkumar was resident of Minimata Nagar, Nagpur. Appellant is the eldest amongst four children of said Gambhirdas and he was working as a labourer.

b) Firobai had left her house along with appellant on 19.5.2000 at about 8.00 a.m. for Nagpur for meeting Gambhirdas father of appellant/her brother-in-law. Firobai was then wearing blue colour Saree, blue colour blouse and blue colour petticoat and gold and silver ornaments and carrying a cash of Rs. 300/-. The appellant again had been to village Teresara on 2.6.2000. Rohitkumar (PW7) then asked appellant regarding his mother to which appellant had told him that his mother had gone along with 3-4 persons of village Popdiya. PW7 at village Popdiya had gathered that his mother had not been to said village. On the same day PW7 along with appellant and his maternal uncle Vishnudas Shahu left Teresara and on 3.6.2000 had been to the house of Gambhirdas father of accused No. 1. Parents of appellant in response to query made about mother of PW7 had told PW7 that his mother had not been to Nagpur. Gambhirdas also informed PW7 that appellant had been to his house, therefore, he along with Chudaman went to Railway Police Station, Sitabuldi, Police Station, Lakadganj and lodged report about missing of his mother. The copy of said report was with appellant. PW7 returned to his village on 6.4.2000. He again went to the Police Station Somani on 23.6.2000 to lodge report. At said Police Station, Officer had shown him a pamphlet received from the Maharashtra State. On seeing pamphlet he identified the photograph therein being of his mother. As appraised by the Police Station Officer, PW7 had been to Police Station, Parshioni and identified the dead body seen in the photographs shown being of his mother. It is thus main case of the prosecution that appellant had committed murder of Firobai.

c) On 20.5.200 with Out Post Mansar report Exh.19 was lodged by Deepak Chichkhede (PW1), resident of Mansar, Maharashtra regarding corpse of woman lying in his field. ASI Idrin on the basis of Exh.19 had registered A.D. No. 16/2000 thereon vide merg information Exh.16. PSI Hiralal Bante (PW 8) after receiving information from ASI Idrin of corpse of a woman lying at Shivar of Dola Mine, had rushed to said spot and after noticing condition of dead body, had come to conclusion that she was murdered. He had lodged written report Exh.57 and registered Crime No. 65/2000 at Parshioni Police Station u/s 302 of Indian Penal Code and taken up the investigation.

d) During the course of investigation on 21.5.2000 PW8 had drawn spot panchanama Exh.23 and so also inquest panchanama Exh.21 and seized samples of earth/ blood stained earth from spot under panchanama Exh.22 and sent corpse for post-mortem. On 22.5.2000 PW8 had seized clothes of deceased under panchanama Exh.29. On 23.6.2000 PW8 had recorded statement of PW7

son of deceased who had identified dead body seen in printed pamphlet being of his mother and received a clue that she had left Teresara for Nagpur on 19.5.2000 along with appellant son of paternal uncle of PW7.

e) PW8 arrested appellant on 25.6.2000. PW8 seized clothes of appellant on 29.6.2000 vide panchanama Exh.31. PW8 on the same day at the instance of appellant, recovered two sarees, one blouse, one petticoat of deceased kept at house of acquitted accused Anupama @ Munnibai Nagpur under memorandum and seizure panchanama Exh.60 and Exh.61 respectively. After receipt of a clue during interrogation of accused Anupama that gold and silver ornaments handed over by appellant to her were sold by her to a Jeweller Rajesh Rokde at Sarafa Bazar, Itwari, Nagpur, PW8 had seized nuggets of gold and silver ornaments from said Rajesh at said place vide panchanama Exh.62. PW8 in consequent to the statement made by appellant under memorandum and discovery panchanama respectively at Exhs. 63 and 64, seized axe found hidden in a dry leaves below a Guava tree. PW8 recorded the statement of witnesses, seized blood sample of appellant, sent query letter Exh.40 and received report Exh.41 in response to same from Medical Officer, Government Hospital at Parshioni. PW8 also seized one chit which was written by appellant and one pamphlet having photograph of Firobai vide panchanama Exh.65. He got conducted identification parade of seized articles through Executive Magistrate, Parshioni and collected memorandum of the same. PW8 sent the seized muddemal to Chemical Analyser with requisition Exhs.35 and 36. He arrested accused No. 2 on 29.6.2000.

f) Thus it is further case of prosecution that dead body of deceased Firobai was dragged from the spot situated in the field of one Rajesh Bele at a distance of 57ft. and was kept in the bathroom of the house situated in the field of PW1 Deepak. Appellant had handed over ornaments of deceased to acquitted accused No. 2 and with her help, had sold them to a Jeweller at Nagpur. Appellant had handed over the clothes of deceased to her. Thus both of them in furtherance of their common intention had caused disappearance of evidence of offence to screen appellant from legal punishment.

3. After committal of case to the Court of the Sessions at Nagpur, said trial was taken up by learned 6th Adhoc Additional Sessions Judge, Nagpur. The appellant vide his plea Exh.12 has pleaded not guilty to charge Exh.11 framed on 22.9.2003 and lateron amended on 12.2.2004 against him and co-accused.

4. The prosecution at trial examined in all eight witnesses. Out of them panch Manish PW 2 and panch Mohan PW 3 having not supported the prosecution were declared hostile. Thus prosecution mainly relied upon the evidence of Deepak PW 1 from Mansar; PW4 ASI Manohar from Mansar Police Station, Smt. Bhanbai PW 5 daughter of the deceased Smt. Kiranbai PW 6 neighbour of deceased, Rohidas PW 7 son of the deceased and lastly PSI Hiranman Bante PW 8 investigating officer of crime.

5. In addition to the oral testimony of above referred witnesses, the prosecution

also relied upon several documents which were prepared during the course of investigation. Out of them at trial the appellant admitted merg information Exh.16, occurrence report Exh.17, inquest panchanama Exh.21, seizure of blood stained earth and simple earth Exh.22, spot panchanama Exh. 23, post mortem report Exh.28, seizure of clothes of deceased Firobai at Exh.29, seizure of clothes of accused No. 1 Exh.31, seizure of blood sample and semen sample of accused No. 1 Exhs.32 & 33 respectively, invoice challan Exhs.34 & 37, requisition to Chemical Analyser Exhs.35 and 36, query report Exh.41 and two Chemical Analyser reports Exhs.70 and 71.

6. The defence of appellant at the trial was that of total denial and of false implication. The appellant to the questions put to him during examination u/s 313 of Cr.P.C. about circumstances appearing against him in the prosecution evidence had answered mostly either same being false or himself being unaware of the same. However, the appellant had admitted of a) PW 7 having been to village Popadia and there he came to know that his mother had not been to the said village and after searching for her for 3-4 days with relatives, he had been to the house of appellant, b) himself having taken Rs. 1,000/- from deceased one year prior to the incident. The appellant did not examine any witness in support of his defence and claimed that his parents were harassed by the police and he was not having any concern with the crime. However, the appellant did not assign any specific reason for any of witness having falsely deposed against him.

7. The prosecution mainly relied upon the circumstantial evidence for establishing guilt of the appellant i.e. the circumstances as found established from oral and documentary evidence adduced by the prosecution at trial i.e dead body of Firobai being found in the bathroom of a field of Rajesh Bele, underwear being seized by PW4 in consequent to the statement made by the appellant, the identification of articles of mother made by PW5 and PW6, deceased having left in the company of appellant on 19.5.2000 as deposed by PW6 and PW7 and then herself wearing the articles as deposed by PW6, the conduct of appellant on 2.6.2000 as established by the evidence of PW1, the recovery of clothes of deceased from the house of acquitted accused and nuggets of gold and silver ornaments from the shop of Jeweller at the behest of appellant, seizure and recovery of an axe at the behest of appellant, the clothes of the deceased being found stained with blood group of "O", the appellant having failed to give explanation to the said circumstances, himself having motive for commission of crime. The Trial Court after assessment of evidence had come to the conclusion of the said circumstance being established by the prosecution. The trial court on the basis of the same had come to the conclusion of the appellant being guilty for commission of offence of murder of deceased and convicted and sentenced him as stated earlier.

8. The learned Counsel for the appellant in support of the appeal urged that:

a) circumstances relied by the prosecution are not clinchingly established by the

evidence adduced for said purpose.

b) prosecution evidence fails to establish that the appellant has absconded as evidence of PW 7 itself reveals that appellant has been to his house at Tedesara on 2.6.2000.

c) and then appellant had informed to PW 7 of deceased having gone along with three four persons of village Popadiya.

d) same squarely takes away sting if any from circumstance of deceased prior to her death being lastly in company of appellant since 19.5.2000.

e) time gap in between deceased seen in company of appellant and the time at which she was found dead, and appellant having explained said circumstance, the said circumstance is of no consequence against appellant much less drawing or leading to the inference of guilt of appellant as erroneously drawn by the lower court.

f) circumstance of recovery of axe at behest of the appellant apart from resting upon interested testimony of I.O. PW 8 in view of so called panch witnesses for memorandum and discovery panchanama Exh. 63 and 64 having not supported the prosecution is again of no consequence as even axe was not found stained with blood and recovery of such article at behest of labourer cannot be said to be any uncommon thing.

g) seizure of the note allegedly written by appellant, from the house of deceased is also inconsequential in absence of any evidence to establish that the same was either written by appellant or is bearing his signature.

h) the circumstance that the appellant had taken Rs. 1000/- from the deceased is inconsequential as appellant himself has admitted same.

i) circumstance of saree of deceased being found in the house of acquitted accused is also of inconsequential in view of the said identification made by interested witness like PW 5 cannot be said to be conclusively establishing the said article being that of the deceased,

j) the said circumstance is also inconsequential in absence of cogent evidence of the same being handed over by the appellant to her and even assuming the same; the same is insignificant having regard to the relationship between deceased and appellant and in absence of any evidence regarding time since which the same was with said acquitted accused,

k) the identification of gold and silver ornaments by PW 7 and PW 5 is wholly inconsequential in absence of any cogent link of the same being the gold/silver of the deceased and particularly in absence of evidence of Jeweller Rajesh allegedly to whom the same were sold,

l) the evidence of PW 6 and PW 7 loses all significance as they have not approached the police at early stage and their statements are admittedly

recorded after a period of one month.

m) the prosecution having suppressed missing report lodged by appellant the same denotes that the prosecution has not come to the court with clean hands.

n) the prosecution evidence fails to establish any motive for appellant to commit such a serious crime,

o) the evidence of PW 7 itself reveals that when he came for giving the report then only the appellant learnt of his aunt having not returned, his conduct cannot be said to be doubtful.

p) the prosecution case of deceased being dragged from the spot in the field of one Rajesh Bele at the distance of 57ft. and was kept in bathroom of house in the field of PW 1 is totally improbable and unbelievable.

q) the prosecution has failed to explain substantial delay occurred in lodging FIR.

r) in view of co accused being acquitted by the trial court, it was wholly improper to convict the appellant on the basis of the same evidence.

9. The learned Counsel for the appellant also placed reliance upon the following decisions in support of her submissions:

i) Inspector of Police, Tamil Nadu Vs. Balaprasanna, ,

(ii) Panchu @ Panchanan Mohapatra v. State of Orissa reported in 2003 (1) Crimes 252,

(iii) Arun Bhanudas Pawar v. State of Maharashtra reported in (2009) 1 SCC (Cri.) 112,

(iv) Malleshappa v. State of Karnataka reported in (2009) 2 SCC (Cri.) 394.

10. The learned APP supported the impugned judgment and order and submitted that the evidence on record clearly establishes circumstances making out a case leading to inference of appellant being perpetrator of the crime. The appellant has failed to explain the circumstances established by the prosecution against him. He has further failed to give the explanation explaining most vital circumstance against him of himself being in the company of the deceased soon prior to the death. On the contrary the conduct of the appellant as revealed from the said circumstance establishes that he has been giving false unacceptable explanation. Thus considering the totality of the circumstances the same leads to unescapable conclusion of guilt of appellant as rightly arrived by the trial Court and as such there are no merits in the appeal and the same should be dismissed.

11. The learned APP, in support of his submission, also placed reliance upon the following decisions:

(i) Earabhadrapa v. State of Karnataka reported in : AIR 1983 SC 446,

(ii) Geejaganda Somaiah v. State of Karnataka reported in 2007 ALL MR (Cri.)

1428 (S.C.)

(iii) Kusuma Ankama Rao Vs. State of Andhra Pradesh, .

12. We have given thoughtful consideration to the submissions advanced by both the parties and carefully perused the record and the decisions relied.

13. At the out set it can be safely said that the prosecution case purely rests upon circumstantial evidence. Out of the circumstances relied by the prosecution, apart from the appellants having not disputed of deceased having homicidal death, the said fact is apparently established from the unchallenged part of the evidence regarding the situation in which body was found i.e. of PW1, PW8, inquest panchanama Exh.21, spot panchanama Exh.23, post-mortem report Exh.28, seizure memo Exh.29. All the said evidence and particularly the matters from post-mortem notes Exh. 28 clearly leads to the conclusion of Firobai having met homicidal death due to head injury sustained by her and so also the other injuries.

14. Now reverting to the moot question of the prosecution having established circumstances establishing guilt of the appellant and in the said process considering the evidence relied by the prosecution; the evidence of Deepak PW 1 from Mansar reveals regarding himself having received information of dead body lying in his field, and having occurrence report lodged Exh.19 about same on 20.5.2000. Upon scrutiny of his evidence apart from same being not challenged by the defence also does not reveal any circumstance for not accepting the matters deposed by him. His evidence considered along with the documents prepared during the investigation thereafter i.e. occurrence report Exh.19, merge report Exh.16 and inquest panchanama, spot panchanama etc. apart from proving said deceased having met with homicidal death also reveals that death must have been caused much prior to 11 to 12.00 noon of 20.5.2000. Needless to add that the said evidence considered with the evidence PW 6 and PW 7 which is referred hereinafter reveals that deceased had left her house on 19.5.2000 along with the appellant also leads to the conclusion of the said death must have been ensued in the night in between 19.5.2000 and 20.5.2000.

15. The evidence of Rohidas PW 7 son of the deceased reveals of himself having deposed inconsonance with the matters stated in the earlier part of the judgment while narrating the prosecution case. The same reveals that on 19.5.2000 appellant had been to his house and asked his mother-deceased to come at Nagpur and his mother had left with him and at that time she had told that she would return back within 2 to 3 days but she having not returned. It reveals that on 2.6.2000 appellant had been to his house at Tedesara and upon asking about the mother by PW 7 he had told that she had gone with 3 to 4 persons of village Popadiya. It reveals that he had searched at the said village and gathered that his mother had not been to the said village. After searching for 3-4 days for mother with the relatives, he had been to the house of the appellant at Nagpur and made inquiry with parents of the appellant and parents had informed that

appellant had been to the house of 20.5.2000. PW 7 had again searched for his mother for 10 to 15 days. At that time appellant had absconded from his house. On 22.6.2000 PW 7 had been to police station and lodged the report.

16. His further part of evidence is inconsonance with the events which had occurred thereafter i.e. regarding having identified photograph of mother in the pamphlet. It also reveals that appellant had taken Rs. 1800/- from his mother. It reveals that she was wearing the ornaments and clothes as deposed by him while leaving the house. He also identified silver and golden nugget before the court.

17. The scrutiny of his evidence does not reveal any serious challenge thrown on part of appellant to his said evidence except making an attempt to bring on the record of PW 7 while recording his statement having informed that on 19.5.2000 his mother has left at about 8.00 pm for meeting paternal uncle of PW 7 at Nagpur. It also reveals of making an attempt to bring on record alleged contradiction mark "A" from his police statement and an omission of PW 7 having not told that appellant was absconding when PW7 has been to his house at Nagpur. However, the record does not reveals any such contradiction/omission being duly established by putting the same to the investigating officer. In view of the same it can be safely said that the evidence of PW7 will deserve to be accepted regarding a) his mother in the company of the appellant having left the house on 19.5.2000 and then she was to return within 2 to 3 days but having not returned, b) on 20.5.2000 appellant alone had been to his house at Nagpur, c) on 2nd June, 2000 the appellant has told PW 7 of his mother along with 2 to 3 persons having been to Popadiya, d) his mother had never been to the said village, e) his mother was wearing clothes and ornaments as deposed by him, f) himself having learnt about death of his mother from - police and amongst other having learnt of her dead body being found on 20.5.2000 in the bathroom on the back side of house in field of Rajan Bele in Shivar of Dola Mine i.e. on the next day after she had left the house along with the appellant.

18. The evidence of next witness Smt. Bhanbai PW 5 reveals that she is daughter of the deceased. It also reveals regarding visit of her mother to her house six months prior to her death, her photographs being taken, her brother PW 7 Rohidas having informed her of appellant having taken her mother and herself having not returned, herself having identified photograph of mother shown by police, police having called her for identification of clothes of her mother and having identified saree and blouse of her mother and so also saree Article 3, petticoat article 4 and blouse Article 5 being the said articles.

19. The scrutiny of her evidence does not reveal any tangible material being brought on record during cross examination except herself having not stated to the police while recording her statement of PW 7 having disclosed that her mother was going to Nagpur along with appellant. Thus even discarding said part of her evidence hardly anything had surfaced on record for not accepting her evidence of saree Article 3, petticoat Article 4 and blouse Article 5 being that of

her mother.

20. The evidence of Smt. Kiranbai PW 6 reveals that she was neighbour of deceased and deceased had informed that she was going out of station and she had left her house along with appellant on that day. It also reveals that then deceased was wearing blue colour saree, matching saree, gold ear top, gold nose stone, silver chain and silver bangles and had not returned to the house and after one month PW 6 came to know about her death. It also reveals that she had identified clothes of deceased in police station, Parsheoni and saree Article 3 and blouse Article 5 before the court being said clothes of deceased. The appellant had not at all challenged the evidence of PW6. Now considering the fact that she was neighbour and the observation made by apex court in the decision of Earabhadrapa - appellant v. State of Karnataka (cited supra) pointed out by learned APP that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family considered in proper perceptive also makes claims staked by PW 6 acceptable. Thus her evidence clearly supports/corroborates the evidence of PW 7 of Firobai having left her house along with appellant and at that time she was wearing the clothes and the ornaments as deposed by the witnesses.

21. The evidence of PW4 ASI Manohar reveals that in consequence of statement of leading to discovery of underwear made by appellant on 4.7.2000 , he had seized underwear Article 10 on the same day in presence of panchas by drawing memorandum and discovery panchanama Exh.44 and 45 respectively. The scrutiny of his evidence also do not reveal any tangible material being brought on record during the cross-examination for not accepting the said claim staked by PW4.

22. The evidence of PSI Hiranman Bante PW 8 investigating officer reveals about the investigation made by him about which the reference has been already made hereinabove. Without making unnecessary detailed reproduction of each of the matter from the same and restricting to the significant part, the same reveals that on 29.6.2000 at the behest of the appellant under memorandum and discovery panchanama Exh.60 and 61 he had recovered two sarees, one blouse and one petticoat of the deceased kept at the house of acquitted accused Anupama. He has given an account of the events of the said discovery and seizure. His evidence also discloses about seizure of silver ornaments effected by him from Jeweller Rajesh Rokde to whom the same were sold by the acquitted accused. It reveals that the nuggets of silver and gold handed over by the said Jeweller were seized by him under panchanama Exh.62. Similarly on 1.7.2000 in pursuance to the statement made by appellant in presence of panchas he had seized an axe concealed in leaves below guava tree taken out by the appellant by taking out the spot under memorandum and discovery panchanama respectively at Exh.63 and 64. His evidence also discloses about collection of blood samples of the accused, obtaining query report Exh.41 in pursuance to query made vide Exh.40 and seizure of chit allegedly in the handwriting of appellant and receiving

of CA report. The scrutiny of his evidence also does not reveal any significant matter being elicited rendering his testimony unacceptable.

23. Now in light of the aforesaid prosecution evidence now taking up the submission of learned Counsel for appellant, it is difficult to accept her submission that prosecution evidence fails to establish of the appellant having absconded as claimed by PW7. The discussion made hereinabove clearly reveals that the said claim of PW7 had remained unshattered in spite of the cross examination effected. Even the so called complaint/missing report said to have been lodged by the appellant has not been placed upon the record. In view of the same, submission cannot be accepted that prosecution had failed to establish of appellant having absconded as claimed by PW1.

24. Now with regard to challenge thrown to the further circumstance of appellant having informed PW 7 on 2.6.2000 of his mother having gone with 3-4 persons of village Popadiya clearly appears to be without any basis, as appellant having made such a disclosure has been found established from the evidence of PW7. Needless to add that considering the evidence of PW7 as a whole and considering the purpose for which deceased had been to Nagpur along with appellant such a say on part of appellant clearly appears to be an attempt made by him to advance improbable explanation for deceased not returning to her house. Having regard to the same it is difficult to accept the same. Needless to add that considering the fact that the deceased had left the house along with appellant on 19.5.2000 and her body was found at about 11.00/12.00 on the next day in the bathroom on the back side of house in field of Rajan Bele in Shivar of Dola Mine, it is difficult to accept that there is any long gap in between the said events.

25. However, with regard to the further submission of the learned Counsel for the appellant that in view of no blood being found upon the axe allegedly recovered at the behest of the appellant being an inconsequential circumstance will deserve credence having regard to the fact that appellant was working as labourer and the prosecution had failed to establish any link of the said seized articles with causing of injuries and consequently the death of the deceased. In view of the same the said circumstance is of no assistance to the prosecution.

26. The same is the case regarding circumstance of recovery of chit at the behest of appellant. The learned Counsel for the appellant was very much right in canvassing that the said circumstance is also inconsequential in absence of the prosecution leading any evidence for establishing of the same being either in the handwriting of the appellant and/or bearing signature of the appellant. Such a evidence being not placed on the record, the said circumstance will be also required to be left out of the consideration as contended.

27. However the further submission of the learned Counsel for the appellant cannot be accepted that the evidence of PW7 of appellant having taken Rs. 1800/- is inconsequential, as prosecution has not established the aforesaid chit being that of appellant and so also in view of appellant himself having admitted

of having taken Rs. 1000/- from deceased. Truly speaking the evidence of PW7 of appellant having taken Rs. 1800/- from deceased having remained unshattered, it will be difficult to give any credence to such submission. At any rate the prosecution evidence also having pointed out that the gold and silver ornaments which were on the person of the deceased while leaving her house were missing when she was found dead, the same clearly appears to be probable motive behind the crime committed. Having regard to the same such said circumstance of appellant having taken Rs. 1800/- from the deceased does not appear to be of much significance.

28. The same is the case regarding another submission canvassed by learned Counsel for appellant of saree/blouse of deceased being seized from the house of acquitted accused at the behest of the appellant. The said circumstance cannot be regarded as inconsequential as tried to be canvassed on the count of the said accused being acquitted by ignoring a fact that the said evidence denotes that the appellant was having knowledge about the same. The appellant having chosen not to throw any light upon the said aspect considered on the backdrop of the deceased having met with death within a day after she had left the house of 19.5.2000 itself reveals the potential of the said circumstance. Thus the same will be required to be taken into consideration and cannot be left out as tried to be canvassed by learned Counsel for the appellant.

29. However, the prosecution having not examined goldsmith from whom the silver/golden nuggets were seized by PW 8 investigating officer and apparently the same being not in the form of ornaments as deceased said to have been wearing when she had left her house, the said evidence cannot be said to be useful to the prosecution for advancing its case.

30. Similarly after taking into consideration that deceased has left the house on 19.5.2000, her body was found on 20.5.2000 and the same was detected to be body of deceased only on 22.6.2000 when the same was identified by PW7, it is difficult to perceive that Investigating Officer could have traced either PW 6 and PW 7 or their statements could have been recorded prior to the day on which the same were recorded. Similarly considering the evidence of PW 7 in proper perspective and the same amongst other revealing that he was trying to search out his mother and in the said process ultimately having been to Police Station, Parsheoni on 22.6.2000 and general tendency of the people to live on hope rather than accepting unpleasant fact, even about which also PW 7 had not received any clue it is difficult to accept that said conduct on part of PW7 or that of PW6 who was only neighbour can be branded as an unnatural conduct. Needless to add upon such facets their evidence cannot be said to be liable to be rejected.

31. Similarly having regard to the fact that deceased along with appellant had left for Nagpur for meeting paternal uncle of PW 7, the evidence of PW7 revealing that she had not been to the house of said paternal uncle as disclosed by them i.e. parents of appellant, the evidence revealing that appellant alone

had been to the said house on 20.5.2000 makes it wholly unacceptable that appellant was not aware that his aunt had not returned or that he became aware of the same only upon PW7 having questioned him. In view of the same the submission canvassed by learned Counsel for appellant can never be accepted that the appellant became aware of the same when PW 7 came for lodging the report. As a matter of fact, the evidence of PW7 reveals the contrary story of appellant having not bothered about the same at least up-till 2.6.2000, i.e. when he had been to the house of PW7 and he had questioned appellant about his mother.

32. Apart from the aforesaid the fact of deceased having left along with appellant on 19.5.2000 for Nagpur, the appellant alone having been to the said house, the explanation given by him of deceased having gone with 2 to 3 persons being inherently improbable, it is difficult to accept that conduct of the appellant cannot be said to be unnatural I as tried to be canvassed by learned Counsel for appellant.

33. The same is the case about the further submission canvassed regarding the appellant could not have been convicted on the same set of evidence upon which the co-accused were acquitted. Needless to add that considering the nature of evidence adduced at trial and discussed hereinabove and taking into account, the evidence which could be said to be against acquitted accused and against the appellant and there existing a marked difference in the same, the aforesaid submission without any further dilation deserves to be rejected.

34. On the aforesaid backdrop and taking into consideration the circumstances which are found established against the appellant by the prosecution evidence i.e. a) deceased was lastly seen alive in the company of the appellant while leaving her house on 19.5.2000 prior to her dead body was found on 20.5.2000 in the bathroom on the back side of house in field of Rajan Bele in Shivar of Dola Mine, b) the deceased having met with homicidal death in between 19th and 20th of May, 2000, c) deceased was to return within 2 to 3 days from Nagpur but having not returned, d) on 20.5.2000 appellant alone had been to his house at Nagpur for which deceased had left, e) on 2nd June, 2000 the appellant has told PW 7 of his mother along with 2 to 3 persons having been to Popadiya, f) the same being falsified to some extent in view of deceased having not been to the said village, g) wearing clothes and ornaments owned by the deceased were not found on her body, h) some of the clothes being seized from house of acquitted accused at the behest of appellant denoting that he was aware of the same, i) appellant had taken an amount of Rs. 1800/- from the deceased, j) appellant having failed to give any reasonable explanation about any of these circumstances; it can be safely said that the same have cumulative effect of pointing towards the guilt of the accused and the same being wholly inconsistent with the hypothesis of innocence of the accused.

35. Now with regard to the decisions cited by both the parties and without unnecessarily making threadbare dilation about all of them it can be safely said

that the effect of circumstance last seen in the company of deceased has been explained by the Hon"ble Apex Court is bound to vary from case to case dependent upon the relevant factors and facets involved in the same. Thus considering such a circumstance established against the appellant, the narrow gap in between deceased seen alive lastly in company of the appellant and probable time of death of the deceased prior to finding of her corpse, coupled with the other circumstances affording corroboration to inference arising out of the same it clearly leads to no other conclusion of there existing a very short gap in between the appellant being seen in company of deceased and the time at which she was found dead and the probable time by which she would have been killed. The narrow time gap considered along with the other incriminating circumstances established by the prosecution, rules out any reasonable probability of culprits being anybody else other than the appellant. Such a conclusion is inevitable as the law pertaining to the circumstantial evidence though requires exclusion of other possibilities the same means the reasonable possibility and not altogether far fetch possibility as observed repeatedly by the Hon"ble Apex Court.

36. As a net result of the aforesaid discussions, after reappraisal of the evidence, we do not find any error having been committed by the trial court warranting an interference on our part with the judgment impugned in the appeal. Thus there being no merits in the appeal, the same deserves to be dismissed and is accordingly dismissed.