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SATISH NIRANKARI

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1074 of 2007)

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JUNE 09, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

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Penal Code, 1860 – ss. 302, 309 – Murder – Attempt to commit suicide – On facts, death of a girl – Girl and appellant in love with each other, however because of difference in caste, girl's family did not give approval to their marriage – Appellant and girl consumed copper sulphate – Thereafter, the girl hanged herself resulting in her death – Appellant survived the attempt since he consumed lesser quantity – Conviction and sentence of appellant u/s. 302 and 309 by the courts below – On appeal, held: Prosecution failed to prove that the cause of death was homicidal – Doctor as also post-mortem report does not say that it was homicidal – Girl and appellant went to the place of the incident together – Statement of the appellant that as girl's health deteriorated, he went out to seek neighbour's help but found her hanging when he returned and thereafter, rushed her to the hospital – Appellant's conditions deteriorated after consuming poison and he remained in the hospital for 50 days – Bindi, vermilion, bangles, rose garland recovered from the place of incident – Also suicide note in the writing of the girl – All factors amply demonstrate that the prosecution failed to bring out and prove the guilt of the appellant beyond reasonable doubt – There are lurking doubts and many missing links – Conviction of the appellant u/s. 302 set aside.

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Criminal jurisprudence – Criminal cases not to be decided on the basis of hypothesis – Prosecution is to prove the guilt of the accused charged for such an offence and that too, beyond reasonable doubt.

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Evidence – Circumstantial evidence – Reliability of – Held: In a case where there is no eyewitness and, which rests on circumstantial evidence, prosecution is obligated to prove all those circumstances which leave no manner of doubts to establish the

guilt of the accused person – Chain of circumstances must be complete and must clearly point to the guilt of the accused. A

Allowing the appeal, the Court

HELD: 1.1 It is a case of circumstantial evidence and there is no eyewitness to the incident in-question. Cause of death of the victim-‘P’, as per the medical report, was Asphyxia and ligature marks were found over her neck. Further, both the appellants as well as ‘P’ had consumed copper sulphate. It is the quantum of the said poisonous substance which made the difference. Inasmuch as lesser quantity consumed by appellant was the reason that he survived, coupled with the fact that he could be taken to the hospital before his conditions deteriorated. However, he remained in the hospital for 50 days which shows that the substance consumed by him also had deleterious effects. It is also an admitted case that both ‘P’ and appellant were in love with each other which had blossomed over a period of time. Their affection for each other was known to ‘P’s family but was not taken positively. ‘P’s father himself stated that because of difference in caste, such an inter-caste marriage had not happened in their family. He, thus, accepted that ‘P’s family refused to give their blessings to the intentions of couple to tie a matrimonial chord. [Para 21][313-G-H; 314-A-C] B C D E

1.2 The story put forth by the appellant is plausible. As per him, ‘P’ was subjected to physical abuse and beatings and was, in fact, mercilessly beaten even on the day of incident. When she was madly in love with the appellant and wanted to marry him, there is a possibility that after receiving such kind of shabbily treatment at the hands of her parents, in anguish she may have decided to revolt and, therefore, proposed to the appellant, that they should get married for which they chose a secluded place. This fact cannot be wished away that from the place of the incident, bare essentials necessary for a marriage which a couple would like to perform in such circumstances, have been recovered. These are in the form of garlands, bangles, bindi, sindoor etc. Thus, the appellant and the deceased got married in such a charged atmosphere. After the marriage was performed, ‘P’ might have started thinking as to what would lie ahead. Knowing the adamant, stiff and belligerent attitude of her family, she might H

A have realised that in no case this marriage would be accepted in
her family. Going by the previous behaviour of her family
members, she might have nurtured the apprehension that neither
she nor the appellant would be spared by her family members. At
this stage; she could have insisted for putting an end to their
B lives themselves. Such kind of thinking is not unusual in a
situation in which the parties were placed, and the mind can work
in such a direction. On this hypothesis, it becomes a case of
committing suicide by 'P', as projected by the appellant.[Para
22][314-D-H]

C 1.3 Other hypothesis is equally plausible. Going by the fact
that 'P' was in love with the appellant and though she wanted to
marry him, she might have told the appellant that because of stiff
resistance from her family she would not marry the appellant as
she would go by the wishes of the family even when she personally
did not approve of this. Such a reaction on the part of a girl to
D sacrifice her love and accept a decision of her parents, even though
unwillingly, is a common phenomenon in this country. If this was
the situation and after she communicated to the appellant her
intention not to marry him as she was suffering physical torture
because of continuing the said relationship, it may not have been
E liked by the appellant. It also happens in love that when a man is
not able to get a girl which he wants, he may go to the extent of
killing her as he does not want to see her alliance with any other
person. This might be the motive in the mind of appellant.
However, whether events turned in this way is anybody's guess
as no evidence of this nature has surfaced. It is not even possible
F for the prosecution to state any such things as whatever actually
happened was only known to two persons, one of whom is dead
and other is in dock. [Para 23][315-A-D]

G 1.4 It is to be kept in mind that this Court is dealing with a
criminal matter where appellant is charged with committing
murder of 'P'. Criminal cases cannot be decided on the basis of
hypothesis. It is also to be kept in mind that it is for the
prosecution to prove the guilt of the accused charged for such an
offence and that too, beyond reasonable doubt. In a case where
there is no eyewitness and, which rests on circumstantial
evidence, the prosecution is obligated to prove all those
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circumstances which leave no manner of doubts to establish the guilt of the accused person, i.e., chain of circumstances must be complete and must clearly point to the guilt of the accused. Chain of continuous circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. It is well established that circumstantial evidence of the following character needs to be fully established: (i) circumstances should be fully proved; (ii) circumstances should be conclusive in nature; (iii) all the facts established should be consistent only with the hypothesis of guilt; and (iv) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused. It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person. [Para 24][315-E-H; 316-A-C]

1.5 The statements of the family members of deceased in the court to the effect that the suicide note was not in the handwriting of the 'P' does not inspire confidence and appears to be an afterthought. In fact, it appears that there was no controversy regarding this aspect in the mind of I.O. It is for this reason that neither any effort was made to have the comparison of the writing on suicide note with the admitted handwriting of 'P' nor was any expert opinion taken thereupon. In any case, this appears to be a big flaw in the investigation inasmuch as even if there was any controversy, such an evidence should have been collected by the prosecution. Failure to do so, coupled with the statement of I.O. leaves no manner of doubt suicide note is in the handwriting of 'P'. That is sufficient to hold that it was a case of suicide and not murder. It may also be mentioned that after collecting the said evidence, the I.O. had initially charged the appellant with the offence under Section 306, IPC, i.e., abetment to suicide. This is sufficient to extend the benefit of doubt to the appellant. That apart, conduct of the appellant on the day of

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A incident, when examined in the said background, creates a dent
in the prosecution case. [Paras 30, 31][319-G-H; 320-A-C]

1.6 The deceased and appellant had gone to the place of
incident together. It is not even the case of the prosecution that
appellant abducted deceased and forcibly took her to the place of
B incident. This can also be seen in light of prior affair of the parties.
Since the parties are in love with each other and families are
against it, they decided to get married. It is established that
deceased was wearing bindi, make-up, sindoor (vermillion) and
12 red bangles. From the place of incident from the place of
C incident following articles were removed-Bindi, Vermillion,
bangles, rose garland, make up material, metal glass, one tumbler
containing copper sulphate water, fruit juice. Both appellant and
deceased thereafter consumed poison however, the appellant
stopped short while drinking poison and wanted to be alive. The
appellant made effort to save deceased and came out of the house,
D raised alarm, and called for help from PW-4-neighbour and told
him to call his brother-‘A’. PW-4 in addition to ‘A’, also called
PW-1 (owner of the house where incident took place). The said
facts were corroborated by PW-4 and PW-1. [Paras 32, 33 and
34][320-D-G]

1.7 The appellant made sure that deceased was taken to
E hospital to save her. The said fact is corroborated by the statement
of PW-13. PW-13 also stated that ‘A’ told him that appellant and
deceased had affair. If appellant’s intention was to commit murder
of the deceased and escape, he could have just left the deceased
at the spot and deceased would have died of poisoning. It was
F pointless and futile for appellants to additionally hang deceased.
Moreover, if such was the intention of the appellant, he would
not have called for help or raised alarm with neighbours. The
appellant also would not have committed the murder in the place
where he worked and operated from. If appellant’s intention was
to commit murder, he could have run away from the spot of
G incident as admittedly, there is no eyewitness of the whole incident.
If appellant’s intention was to commit murder, he would not have
directed his brother-‘A’ to call for deceased’s parents, which he
admittedly did. Admittedly appellant also consumed poison and
was in hospital for 50 days. Appellant is also convicted for Section

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309 IPC for attempting to commit suicide. [Paras 35-39][320-G-H;321-A-D] A

1.8 The High Court made two observations as reasons in support of the conclusion that it is the, appellant who committed murder. First reason was that it was highly unbelievable that 'P' could arrange the poison from a house belonging to a stranger. B
Second reason was that after consuming poison, a lonely girl could not fathom strength to hang herself. These are mere conjectures. There had to be a positive evidence that the appellant had administered poison to the deceased, which is missing. Moreover, the circumstances assumed by the High Court are again unwarranted. [Para 40][321-D-F] C

1.9 The prosecution failed to prove that the cause of death was homicidal. Doctor-PW-3 did not say that death was homicidal in nature. Post-mortem Report also does not say that it was homicidal. This aspect is not even dealt with by the High Court. Further, the alleged weapon, i.e., cable wire was not sent to CFSL and to any scientific laboratory to confirm fingerprints of the appellant. All the said factors amply demonstrate that the prosecution has not been able to bring out and prove the guilt of the appellant beyond reasonable doubt. There are lurking doubts in the story of the prosecution and many missing links. The prosecution has not been able to prove the guilt of the appellant beyond reasonable doubt. As a consequence, the conviction of the appellant under section 302 IPC is set aside. [Paras 41,42 and 44][322-E-F; 323-F] D E

State v. Dr. Ravindra (1992) 3 SCC 300 : [1992] 2 SCR 815; *Chandrakant v. State of Gujarat* (1992) 1 SCC 473; *Padala Veera Reddy v. State of A.P.* (1989) Suppl. 2 SCC 706; *Bodhraj Alias Bodha and Ors. v. State of Jammu & Kashmir* (2002) 8 SCC 45 – referred to. F

Wills' Circumstantial Evidence by Sir Alfred Wills – referred to. G

Case Law Reference

[1992] 2 SCR 815	referred to	Para 24	
(1992) 1 SCC 473	referred to	Para 24	
(1989) Suppl. 2 SCC 706	referred to	Para 25	
(2002) 8 SCC 45	referred to	Para 43	H

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1074 of 2007.

From the Judgment and Order dated 19.02.2007 of the High Court of Rajasthan at Jaipur Bench, Jaipur in D. B. Criminal Appeal No. 382 of 2004.

B Huzefa Ahmadi, Sr. Adv., Vivek Jain, Mrs. Manik Karanjawala, Advs. for the Appellant.

S. S. Shamsbery, AAG., Amit Sharma, Ankit Raj, Ms. Ruchi Kohli, Milind Kumar, Advs. for the Respondent.

C The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. Pooja, daughter of Pramod Bhatnagar (Informant) went missing on November 01, 1995. On that day, she had left her home at 5.30 PM to attend her MBA classes. However, she did not return back. Her father and family members became anxious and worried when they found that she had not returned till 9.00 PM. Before they could go out to search for her, one Ashok informed them around 10.00 PM, that Pooja was admitted to SMS Hospital, Jaipur. On receiving this information, the informant rushed to the hospital. After reaching there, he found that body of Pooja was lying there as she was already dead. As per the informant she was murdered by the appellant herein, who had strangulated her neck by squeezing the same. Next morning, the Informant lodged written report of the murder of Pooja with the Police Station, Gandhi Nagar, Jaipur, stating the aforesaid facts.

2. On the basis of the report, case was registered and police sprung into action. Dead body of Pooja was subjected to autopsy. Statements of various witnesses were recorded and necessary memos were drawn. The appellant was arrested. Challan was filed in the court implicating the appellant alleging that the appellant had committed the murder. The case came up for trial before the Special Judge (Communal Riots/Man Singh murder), Jaipur who framed the charges under Sections 302 and 309 of the Indian Penal Code (for short, 'IPC'). The appellant denied the charges and claimed trial. The trial was held wherein the prosecution produced as many as 16 witnesses. Statement of the appellant, thereafter, was recorded under Section 313 of the Code of Criminal Procedure (for short, 'Cr.PC') wherein the appellant claimed innocence and rebutted the prosecution story. The version projected by him was that Pooja was

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madly in love with him and wanted to marry him. However, her parents did not agree for their marriage. Accordingly, both, the appellant and Pooja had decided to commit suicide. Both of them consumed copper sulphate, though the quantity taken by the appellant was lesser in comparison with that of Pooja. Soon after Pooja started vomiting. At this juncture, he went out of the room to seek help. When he returned back he found Pooja hanging. He untied the noose of cable wire which was used for the purpose of hanging and removed her to the hospital with the help of the neighbours.

3. Arguments were heard by the Special Judge. Aforesaid story put forth by the appellant did not convince the trial court judge, who after analyzing the prosecution evidence, came to the conclusion that the prosecution was able to prove, beyond reasonable doubt, charges against the appellant. Holding that Pooja did not commit suicide but was murdered, the trial court found the appellant guilty of murder. It imposed the sentence of life imprisonment for committing that crime, punishable under Section 302, IPC. The trial court also held that since the appellant had himself admitted that he had consumed copper sulphate with the intent to commit suicide, offence under Section 309 also stood proved. For this offence, the appellant was directed to undergo simple imprisonment of three months. Monetary fines for both the offences were also inflicted with default clauses.

4. The appellant preferred appeal against the said judgment under Section 374 Cr.PC by approaching the High Court of Judicature for Rajasthan. This appeal has been dismissed by the High court vide impugned judgment dated February 19, 2007. Aggrieved by this outcome, he has challenged the order of the High Court, which is the subject matter of the present appeal.

5. From the aforesaid prosecution story narrated in brief along with the defence version, it becomes clear that it is only the appellant who is involved in the episode in-question. The only aspect on which the controversy revolves around is as to whether it is the appellant who committed murder of Pooja or Pooja had committed suicide? Since, this is the only narrow scope of the appeal, arguments were advanced by the counsel for the parties revolving around this limited aspect. Obviously, our discussion would also remain within the bounds of the aforesaid controversy, eschewing other details which are not warranted and relevant for the purposes of deciding this appeal.

A 6. It would be apposite to take into consideration some of the admitted facts which would also help in resolving the dispute.

7. Deceased Pooja was a student of English Literature and simultaneously she had joined Management course of American Institute for which she was attending classes in the evening. She was 23 years of age. Satish (appellant) was non-matric and Pooja fell in love with the appellant while she was teenager. She wrote a few love letters to the appellant during that period. On November 01, 1995, Pooja left her house at 5.30 PM, but she did not reach to attend management classes. Around 10 PM, one Ashok informed the father of Pooja that she was admitted to the Hospital. When parents of Pooja reached hospital, they found Pooja dead.

8. Pooja was found hanging in the house which bears Municipal No. D-9 Indrapuri, Jaipur. This house belonged to one Priyambda, daughter of Vidya Bhushan, Advocate (PW-1) and was under construction on the relevant date, though the construction was almost complete. Thus, at the time of incident nobody was staying in the house. How this incident happened and under what circumstances the incident came to be noticed and Pooja was taken to hospital are described by Vidya Bhushan (PW-1), Mahesh Sharma (PW-2), Vinod Kumar Gupta, Advocate (PW-4) and Karni Singh Rathore, Advocate (PW-13). Their statements need to be noted, in brief, at this stage.

9. Vidya Bhushan, advocate (PW-1), in his deposition stated that the house D-9, Indrapuri belonged to his daughter Priyambda and its construction was almost complete. Key of the house usually remained near electricity meter so that labourers could do their work. Although Mahesh was not his son, he was living with him since his childhood. In the year 1990-91, he got installed Dishantenna in the house and its control room was at the ground floor. Satish who was a mechanic of dish-antenna associates with Mahesh in that work. On November 01, 1995 Vinod Gupta, Advocate informed him over telephone around 8.30 PM that in his house at Indrapuri a girl was lying unconscious and a boy was pelting stones. Thereupon, he directed Mahesh to make inquiry. Mahesh later on informed him that from his house one boy and a girl were removed to the hospital. He further stated that site-plan (Ex. P-1) was drawn in his presence and in the ground floor of his house, a register, purse, wrist watch, small box of vermilion, metal glass, glassware contained copper sulphate Neela-Thotha, fruit juice and many other articles were found.

In cross-examination, he stated that two cable wires were hanging from the railing of staircase. Garlands of rose and glass bangles were also lying. He also stated that he had seen Pooja (deceased) once when she came to his house with Satish. Satish wanted to marry her and he advised Satish to seek permission of their parents. A

10. Mahesh Sharma (PW-2) deposed that the house D-9, Indrapuri was in the name of Vidhya Bhushan's daughter, Priyambda. In that house he with the assistance of appellant installed dish-antenna. When the business of dish-antenna was in progress, one day the appellant came to the house with a girl whose name was Daisy. On November 01, 1995 around 9 PM Vidhya Bhushan directed him to go to the said house. On reaching the house he was informed by neighbour Vinod Gupta that a boy and a girl consumed poison and they were vomiting. Karni Singh Ji thereafter took them to SMS Hospital. B C

11. Vinod Kumar Gupta, advocate (PW-4) deposed that plot No. D-9, adjacent to his house, belonged to Vidhya Bhushan, Advocate. On November 01, 1995 around 9 PM while he was sitting on dining table he noticed that somebody was pelting stones at his house. He came out of the house and found that on plot No. D-9 a boy was vomiting. The boy told him that he and his girlfriend consumed poison. The boy made request to save him and gave telephone number of his brother. Vinod Gupta communicated information about the incident to Vidhya Bhushan and the brother of the boy. After fifteen minutes three persons came on a scooter and the girl was removed to the hospital. D E

12. Karni Singh Rathore, Advocate (PW-13) in his deposition stated that on November 01, 1995 around 9 PM he had gone to the house of his relative Anand Singh Rathore at Satya Vihar Colony for taking dinner. As soon as he reached one boy of Video parlour came to him and requested him to save the life of his brother. He then carried a boy and a girl to the hospital. The condition of the girl was serious. F

13. At this juncture, we reproduce the post-mortem report (Ex. P-4) wherein the following ante-mortem injuries were found on the dead body of Pooja: G

"1. A ligature mark 29cm x 0.5cm placed 8 cm above supra sterna notch in mid line and is nearly transversely all around the neck, another ligature mark commencing from the left side of the upper border of ligature mark on one above 3 cm from the mid line and H

A is running obliquely upwards backwards laterally and disappearing in chairs just post to the left mastoid process and it is 06 cm below left ear labule.

B Right side 2 cm from the upper border of ligature mark no one running obliquely upwards backwards and laterally upto below right mastoid process and it is 04cm below right ear lobule the ligature mark number one is deep and upper one is not deeper brown coloured.

2. Hematoma 5cm x 4cm on occipital region.

C Medical board that conducted autopsy on the dead body opined that the cause of death was asphyxia due to pressure on neck with ligature.”

14. It would also be pertinent to mention here that Pooja was wearing bangles, bindi and had also applied Sindoor. Garlands were also there.

D 15. An alleged suicide note (Ex. P-3), purportedly written by Pooja was also found from the place of incident in the register belonging to Pooja which register Pooja had presumably taken along with her as she had left the house to attend her management classes. This suicide note reads as under:

E “”Dear Mummy Papa

F We both are taking our lives. We cannot live without each other. We tried a lot to make you understand but you refused to listen to us. We and no one else are responsible for our death. It is our last desire that we both be cremated together on one pyre. Hope you would definitely fulfil our last desire.

Your daughter Sd/- Daisy

Dear Bhai sahab

G Must fulfil our last desire. Satish” Sd/- Satish.”

H 16. The aforesaid facts proved on record would demonstrate that the appellant and Pooja were alone in the house which belonged to a third person, at the time of incident. There is no eyewitness of the occurrence. Both had consumed copper sulphate. However, since the appellant had consumed lesser quantity, and was, therefore, fully conscious

as he had gone out and drawn the attention of Vinod Kumar Gupta (PW-4) towards the incident by pelting stones at his house. At the same time, cause of death of Pooja was Asphyxia and ligature marks were found over her neck. Thus, it is not the consumption of copper sulphate which resulted into her death. At this juncture, we would also like to reproduce the entire statement of the appellant recorded under Section 313, Cr.PC where he claimed his innocence:

"I am not guilty, case is false. Puja alias Daisy was residing near my house. Houses of both of us were situated close to each other. We both used to visit the houses of each other. Puja used to visit my house. Since childhood, strong friendship developed between us. We both started loving each other. We used to write love letters to each other as well. Exh. D.6 to Exh. D.11 letters were written by Puja only to me which were given by me to police. We both wanted to marry but parents of Puja were against our marriage. On 21.10.95 it was birthday of Puja. That day I went to the house of her parents about our marriage whereupon they flatly refused for the same and got angry and abused and beat Puja and threatened to kill me. On 1.11.95 Puja came to me and told that today her parents have beaten her black and blue. They beat her daily and do not allow her to meet you. Thereupon, we both decided that today we would marry each other. We both went to the market on scooter and from there Puja herself bought make up items, bangles, bindi, etc. Also purchased garlands for marriage. We both performed marriage before the photo of God by exchange garlands. Thereafter, Puja said that he parents and relatives are very dangerous people they would kill me and you. She said now she does not want to live and would commit suicide. I explained to her but she did not agree to my advice. Then I told her that I cannot live without you. Pooja said that we lived together and should die together. Then, she wrote a note to her parents in which I also put my signature and Puja also signed it. Then she brought jug fill with liquid like copper sulphate from the white washing material lying there in the house D-9, Inderpuri. She gave that to me also and herself consumed it. I consumed in small quantity and I thought that one should not commit suicide and then I put down the glass. In the meanwhile, condition of Daisy started deteriorating and she started vomiting. I went out

A for help and knocked at the door of neighbour Vinod, Advocate
but no one came out inspite of knocking the door for long and
thereupon from outside I threw stones at his house. After
sometime, Vinod came out and I requested him to save Daisy and
have (*sic.*) him telephone number of my brother. After that I
B went back to the house and saw Puja hanging with wire and
withering in pain and then I ran to her and got her freed from the
hanging and she fell down on the floor and I also sat beside her
and started attending her. After some time, my brother Ashok
reached. I told him to call parents of Puja whereupon he said that
C first arrange for her treatment as that could save her. Thereupon,
I also considered it better and then we were taken to the hospital.
There I sent Ashok to the house of Puja to inform her parents. I
do not know what happened after that.”

17. Keeping in view the aforesaid aspects, we proceed to discuss
the vital issue.

D 18. Mr. Huzefa Ahmadi, learned senior counsel for the appellant
stated that the circumstantial evidence which has surfaced on record
clearly leans in favour of the appellant’s version. He submitted that
prosecution accepted that there was a love affair between the appellant
and Pooja. It is also accepted that parents of Pooja were against their
E marriage. Not only this, since Pooja was determined to marry the
appellant, she was maltreated and physically beaten by her parents. On
the fateful day, i.e., November 01, 1995, Pooja had told the appellant
that she was beaten black and blue by her parents. Therefore, she was
upset and, at that moment, both decided to marry each other. It is for
this reason that Pooja had herself brought make up items like bangles,
F bindi, sindoor etc. and she purchased garlands for marriage. It is in
these circumstances that they married each other before the photo of
God. However, immediately thereafter, Pooja became paranoid as she
had an apprehension that their marriage will not be accepted by her
parents and relatives who were very dangerous and in all likelihood they
G would kill both Pooja and the appellant. Under this fear she decided to
commit suicide and did not change her decision inspite of appellant’s
advice. At this stage, appellant also decided to end his life as he did not
want to live without Pooja. In that heat of the moment both of them
decided to end their lives. It is under these circumstances that they took
liquid like copper sulphate from the washing material which was lying in
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the house; D-9, Indrapuri. Emphasizing these facts coupled with the subsequent events, that is, the circumstances under which the appellant, after seeing that condition of Pooja was deteriorating, went out and sought help of neighbour, Vinod Kumar Gupta (PW-4). He also submitted that when nobody came out from the house of PW-4 after he knocked at the door, the appellant frantically threw stones at his house to gain attention, forcing him to come out. From these circumstances, Mr. Ahmadi pleaded that the entire conduct of the appellant, taken together, would clearly show that the appellant had not killed Pooja and would not have done so as he loved her immensely from the childhood. He also highlighted the following facts which were pleaded before the High Court.

(i) The prosecution failed to establish motive behind the guilt.

(ii) Following material facts were left unnoticed by the learned trial judge:-

a. Pooja had left her house on November 1, 1995 at 5 PM and this fact is established by the statements of Pramila Bhatnagar (PW9) and Pramod Bhatnagar (PW12) but there is no evidence as to where she remained from 5 PM to 9 PM.

b. There is no evidence from where the accused purchased Sindoor (Vermillion), Bindi and Bangles.

c. There is no evidence as to who did the make-up.

d. There is no evidence from where poison was purchased and who had administered poison.

e. There is no evidence as to who were the associates of Ashok. Even Ashok had not been examined by the prosecution.

f. Appellant also consumed poison and was admitted in hospital for about 5 months.

(iii) There is no definite opinion of the doctor that death of Pooja was homicidal. The possibility that the death could be suicidal could not be ruled out.

(iv) The fact that Pooja committed suicide was established from the letter (Ex. P-3) which was written by her. He submitted that the courts below had simply gone by the testimony of Pooja's mother, who had denied the handwriting of Pooja on Ex. P-3,

A which was neither here nor there as it was self-serving evidence. On the other hand, prosecution did not make any attempt to either compare the handwriting on Ex. P-3 with admitted handwriting of Pooja or sought any opinion of handwriting expert.

B (v) In this behalf, he also referred to the deposition of PW-16, S.H.O. Gandhi Nagar, Police Station.”

C 19. Mr. Ahmadi read out the relevant portion from the deposition of Vidya Bhushan, Advocate (PW-1), who had supported appellant’s version to the extent that he knew that Pooja and the appellant were in love with each other and Pooja’s parents were opposing the same. PW-1 had even told them that he would persuade their parents for their marriage. Else, both should go to court for marriage. He also referred to the deposition of Pramod Bhatnagar (PW-12), father of Pooja — deceased who had accepted in his cross-examination that he was Kayasth and in their family no Kayasth had ever married a Sindhi. He had also deposed that love marriage had never taken place in their family.

D 20. Learned counsel for the State, on the other hand, read out the depositions of Manju Bhatnagar, aunt of the deceased (PW-8), Pramot Bhatnagar, father of the deceased and Pramila Bhatnagar (mother of the deceased). All of them had consistently stated that they recognised the handwriting of Pooja and Ex. P-3 was not written by her. They had stated that Pooja was not in the habit of writing in Hindi and she used to write in English only. It was also explained by PW-9 that the letter started with addressing them as ‘Mummy Papa’ whereas she never used to call her ‘mummy’ and never called her father ‘papa’. Instead she was addressing them as Jiji and Kaka Saheb respectively. She also never used the words ‘My dear’ for her parents. They also deposed to the effect that at the end of that letter name ‘Daisy’ was written which was not the name of her daughter. The learned State Counsel also drew the attention of the Court to the seizure memo of articles which were seized from the place of occurrence. He submitted that apart from other articles like garlands, bindi packet, vermilion, dark red colour box (sindoor), etc. It was also significant to note that in the articles belonging to Pooja, one mark sheet of University of Rajasthan was found in the polythene bag as well as prospectus of University of Rajasthan for post-graduate studies 1995-96 with form and also one syllabus of University of Rajasthan for M.A. English on which her name, Pooja Bhatnagar, was written with pen. Two passport size photographs of Pooja in black and white on

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the back of which No. 5134307 was written, were also found in her bag. A
With the aid of these articles, learned counsel submitted that Pooja had
ambitions for higher studies and the aforesaid papers showed that she
was planning to apply for admission in M.A English in the University.
With these kinds of ambitions, there was no question of Pooja taking her
life by committing suicide. He also relied upon the judgments of the Trial B
Court as well as the High Court and the manner in which evidence was
discussed and analysed by the two courts below holding that the
circumstances conclusively established chain of evidence so complete
as not to believe any unreasonable ground for the conclusion consistent
with the innocence of the appellant and that the circumstantial evidence C
conclusively proved that it was a case of murder committed by the
appellant and, particularly, emphasised that as per post-mortem report
cause of death was Asphyxia. Further, Dr. S.K. Pathak (PW-3), who
conducted autopsy on the dead body of Pooja had specifically stated
that hematoma measuring 5cmX4cm was found on occipital region. There
was second ligature mark ending towards back of the neck which was D
caused by strangulation. He further submitted that the story projected
by the appellant that when he came out of the house for help, Pooja had
hanged herself with wire was so improbable that no credence could be
given to it, as it was not possible for a lonely girl, after consuming poison
to gather such strength to hang herself. He also submitted that the High E
Court was perfectly justified in its conclusion that the version of the
appellant that Pooja herself brought copper sulphate from the house, D-
9, Indrapuri, was highly unbelievable being stranger in the house of an
advocate to arrange that poison.

21. We have given our due considerations to the submissions
advanced by the counsel on either side and have also minutely gone F
through the judgments of the courts below alongside the deposition of
witnesses which were referred to and relied upon by both the parties in
support of their respective cases. As is clear from the factual discussion
recorded upto now, it is a case of circumstantial evidence and there is no
eyewitness to the incident in-question. Cause of death of Pooja, as per
the medical report, was Asphyxia and ligature mars were found over G
her neck. Further, both the appellant as well as Pooja had consumed
copper sulphate. It is the quantum of the said poisonous substance which
made the difference. Inasmuch as lesser quantity consumed by appellant
was the reason that he survived, coupled with the fact that he could be

A taken to the hospital before his conditions deteriorated. However, he remained in the hospital for 50 days which shows that the substance consumed by him also had deleterious effects. It is also an admitted case that both Pooja and appellant were in love with each other which had blossomed over a period of time. They were neighbours and were frequently meeting. Their affection for each other was known to Pooja's family but was not taken positively. Father of Pooja (PW-8) has himself stated that because of difference in caste, he being a Kayasth and the appellant being a Sindhi, such an inter-caste marriage had not happened in their family. He, thus, accepted that Pooja's family refused to give their blessings to the intentions of couple to tie a matrimonial chord. In this backdrop, question that arises is as to whether both of them wanted to marry even if Pooja's parents and family members did not approve of the alliance and they got married in the manner mentioned by the appellant in his statement under Section 313 of the Cr.P.C.

22. The story put forth by the appellant is plausible. As per him, Pooja was subjected to physical abuse and beatings and was, in fact, mercilessly beaten even on the day of incident. When she was madly in love with the appellant and wanted to marry him, there is a possibility that after receiving such kind of shabbily treatment at the hands of her parents, in anguish she may have decided to revolt and, therefore, proposed to the appellant, that they should get married for which they chose a secluded place. This fact cannot be wished away that from the place of the incident, bare essentials necessary for a marriage which a couple would like to perform in such circumstances, have been recovered. These are in the form of garlands, bangles, bindi, sindoor etc. Thus, the appellant and the deceased got married in such a charged atmosphere. After the marriage was performed, Pooja might have started thinking as to what would lie ahead. Knowing the adamant, stiff and belligerent attitude of her family, she might have realised that in no case this marriage would be accepted in her family. Going by the previous behaviour of her family members, she might have nurtured the apprehension that neither she nor the appellant would be spared by her family members. At this stage, she could have insisted for putting an end to their lives themselves. Such kind of thinking is not unusual in a situation in which the parties were placed, and the mind can work in such a direction. On this hypothesis, it becomes a case of committing suicide by Pooja, as projected by the appellant.

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23. Other hypothesis is equally plausible. Going by the fact that Pooja was in love with the appellant and though she wanted to marry him, she might have told the appellant that because of stiff resistance from her family she would not marry the appellant as she would go by the wishes of the family even when she personally did not approve of this. Such a reaction on the part of a girl to sacrifice her love and accept a decision of her parents, even though unwillingly, is a common phenomenon in this country. If this was the situation and after she communicated to the appellant her intention not to marry him as she was suffering physical torture because of continuing the said relationship, it may not have been liked by the appellant. It also happens in love that when a man is not able to get a girl which he wants, he may go to the extent of killing her as he does not want to see her alliance with any other person. This might be the motive in the mind of appellant. However, whether events turned in this way is anybody's guess as no evidence of this nature has surfaced. It is not even possible for the prosecution to state any such things as whatever actually happened was only known to two persons, one of whom is dead and other is in dock.

24. Which of the two hypothesis prevails in the present case, is the question? We have to keep in mind that this Court is dealing with a criminal matter where appellant is charged with committing murder of Pooja. Criminal cases cannot be decided on the basis of hypothesis. Another aspect which is to be kept in mind is that it is for the prosecution to prove the guilt of the accused charged for such an offence and that too, beyond reasonable doubt. In a case where there is no eyewitness and, which rests on circumstantial evidence, the prosecution is obligated to prove all those circumstances which leave no manner of doubts to establish the guilt of the accused person, i.e., chain of circumstances must be complete and must clearly point to the guilt of the accused. Chain of continuous circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. It is now well established, by catena of judgements of this Court, that circumstantial evidence of the following character needs to be fully established:

- (i) Circumstances should be fully proved.
- (ii) Circumstances should be conclusive in nature.
- (iii) All the facts established should be consistent only with the hypothesis of guilt.

- A (iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (*see State vs. Dr. Ravindra; 1992 (3) SCC 300*); *Chandrakant vs. State of Gujarat; (1992) 1 SCC 473*. It also needs to be emphasised that what is required is not the quantitative, but
- B qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused
- C or the guilt of any other person.

25. Following tests laid down in *Padala Veera Reddy vs. State of A.P.*¹ also need to be kept in mind:

- D “10. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within
- E all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not
- F only e consistent with the guilt of the accused but should be inconsistent with his innocence.”

26. Sir Alfred Wills in his book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

- G “(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

¹ 1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; A

(3) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced with the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and B

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.” C

27. In the present case, the circumstances which have been weighed by the courts below in arriving at the finding of guilt of the appellant are the following: C

(i) The appellant and deceased were alone together in a lonely house belonging to a third party which were lying vacant and was at the advance stage of construction. D

(ii) Post-mortem report suggested that cause of death of Pooja was Asphyxia and ligature marks were found over her neck.

(iii) Though, both the appellant and Pooja consumed copper sulphate, the quantity consumed by the appellant was much less because of which he was in full senses and he could go out and draw attention of a neighbour towards the incident by pelting stones at his house. E

(iv) When the condition of Pooja, as a consequence of consuming poison, had deteriorated there was no reason for her to hang herself. F

(v) The High Court has queried as to how could a lonely girl after consuming poison fathom strength to hang herself.

(vi) The statement of the appellant that Pooja herself brought copper sulphate from the place in which they were housed was highly unbelievable. The High Court has queried that being a stranger in the house of a third person how she could arrange it. G

(vii) Since in the said house only Pooja and the appellant were H

A there, it is the appellant who was supposed to explain the
circumstances because of the legal position contained in Section
106 of the Evidence Act, which the appellant has failed to do.

(viii) We may remark, at the outset, that observation of the High
Court that the appellant did not discharge the burden cast upon
him by virtue of Section 106 of the Evidence Act is not correct.
B The appellant has given his explanation to each and every
circumstance in his statement under Section 313, Cr.P.C. He
has also cross-examined the prosecution witnesses on this
aspect. Apart from his own oral statement, there could not
C have been any other evidence and it was not possible for him
to produce any other witness as well, when this fact is accepted
that there was no third person available. It would be a different
issue as to whether his statement is worthy of any credence
and that aspect shall be discussed later at an appropriate stage.
D What is emphasized here is that primary burden always remains
on the prosecution to establish the guilt of the accused, which
is not only cardinal principle of the criminal jurisdiction, but
also enshrined in Section 101 of the Evidence Act. Therefore,
in the first instance, the matter needs to be examined from the
angle as to whether the prosecution has been able to prove the
guilt. While doing so, it can be discussed as to those facts
E which were within the special knowledge of the appellant,
whether his explanation in this behalf is convincing or not.

28. Having said so, we would like to start with the purported suicide
note (Ex. P-3) as that is the most material piece of evidence if that is in
fact the suicide note of deceased, no further discussion is needed because
F it is sufficient to prove the innocence of the appellant. It is not in dispute
that this note was found in the notebook belonging to Pooja. It was
found at the time of inquest proceedings and was specifically taken into
possession by the Police Officer (PW-16). The said suicide note is
discarded by the courts below believing the statements of mother, father
and aunt of deceased to the effect that it is not in the handwriting of
G Pooja. While taking this course of action, both the courts below
conveniently ignored the pertinent statement made by Investigating
Officer, Suresh Saini (PW-16) that "it is correct that none of witnesses
told me that this that (*sic.*) Ex P-3 suicide note is not in the handwriting
of Puja alias Daisy. Witnesses stated that it is in the handwriting of Puja
H only."

29. Thus, when the suicide note was recovered in the presence of PW-12 (father of the deceased) and was seized by the I.O. at that point of time, family members of Pooja did not deny that the same was not in the handwriting of the deceased. On the contrary, this very I.O. has further mentioned in his deposition that these witnesses had stated that this note was in the handwriting of Pooja only. Following deposition of PW-12 in this behalf, in fact, clinches this aspect of the issue:

“Word Daisy written in suicide note Exh. P.3 regarding which I ensured from witnesses and from the investigation that this Daisy is another name of Puja. It is correct that no witness told me this about Exh. P.3 suicide note that it was not in the handwriting of Puja alias Daisy. Witnesses stated that it is in the handwriting of Puja only. It is also correct that none of witnesses Manju Bhatnagar, Pramod Bhatnagar, Devender Mohan Bhatnagar, Pramila told me that Daisy is not the other name of Puja and none of the aforesaid witnesses denied the fact of Exh. P-3 written in the handwriting of Puja.

I conducted investigation till the time of getting suspended on 14.02.1996. It is correct that commission of offence found under Section 306 IPC till the time of arrest of accused and he was arrested under this Section only. It is correct that after arrest of accused supplementary statement of Smt. Pramila Bhatnagar were taken on 23.12.1995 and kept in the file. It is correct that after recording supplementary statement of Pramila Bhatnagar, same were kept in the file. It is correct that Pramila Bhatnagar admitted in her statements that Exh. D-6 Exh. D-11 are in the handwriting of Puja. I do not remember that I had asked Pramila Bhatnagar or not regarding handwriting of Exh. P.3 that this handwriting is of Puja.”

[Emphasis supplied]

30. In view of the above, statements of the family members of deceased in the court to the effect that Ex.P-3 was not in the handwriting of the Pooja does not inspire confidence and appears to be an afterthought. In fact, it appears that there was no controversy regarding this aspect in the mind of I.O. It is for this reason that neither any effort was made to have the comparison of the writing on Ex. P-3 with the

A admitted handwriting of Pooja nor was any expert opinion taken thereupon. In any case, this appears to be a big flaw in the investigation inasmuch as even if there was any controversy, such an evidence should have been collected by the prosecution. Failure to do so, coupled with the statement of I.O. leaves no manner of doubt Ex. P-3 is in the handwriting of Pooja. That is sufficient to hold that it was a case of suicide and not murder. It may also be mentioned that after collecting the aforesaid evidence, the I.O. had initially charged the appellant with the offence under Section 306, IPC, i.e., abetment to suicide. This is sufficient to extend the benefit of doubt to the appellant.

C 31. That apart, conduct of the appellant on the day of incident, when examined in the aforesaid background, creates a dent in the prosecution case. In this behalf, the learned counsel for the appellant drew our attention to the following acts of the appellant on that day.

D 32. The deceased and appellant had gone to the place of incident together. It is not even the case of the prosecution that appellant abducted deceased and forcibly took her to the place of incident. This can also be seen in light of prior affair of the parties.

E 33. Since the parties are in love with each other and families are against it, they decided to get married. It is established that deceased was wearing bindi, make-up, sindoor (vermillion) and 12 red bangles. From the place of incident from the place of incident following articles were removed – Bindi, Vermillion, bangles, rose garland, make up material, metal glass, one tumbler containing copper sulphate water, fruit juice (8-9/AD).

F 34. Both appellant and deceased thereafter consumed poison however, the appellant stopped short while drinking poison and wanted to be alive. The appellant made effort to save deceased and came out of the house, raised alarm, and called for help from PW-4 – Vinod Gupta (neighbour) and told him to call his brother – Ashok. PW-4 in addition to Ashok, also called PW-1 (owner of the house where incident took place). G The said facts are corroborated by PW-4 and PW-1.

H 35. The appellant made sure that deceased was taken to hospital for save her. The said fact is corroborated by the statement of Pw-13 – Karni Singh – who stated that he took appellant and deceased to the hospital. PW-13 also stated that Ashok told him appellant and deceased had affair.

36. If appellant's intention was to commit murder of the deceased and escape, he could have just left the deceased at the spot and deceased would have died of poisoning. It was pointless and futile for appellants to additionally hang deceased. Moreover, if such was the intention of the appellant, he would not have called for help or raised alarm with neighbours. The appellant also would not have committed the murder in the place where he worked and operated from.

37. If appellant's intention was to commit murder, he could have run away from the spot of incident as admittedly, there is no eyewitness of the whole incident.

38. If appellant's intention was to commit murder, he would not have directed his brother – Ashok to call for deceased's parents, which he admittedly did.

39. Admittedly appellant also consumed poison and was in hospital for 50 days. Appellant is also convicted for Section 309 IPC for attempting to commit suicide.

40. We have pointed out above that the High Court had made two observations as reasons in support of the conclusion that it is the, appellant who committed murder. First reason was that it was highly unbelievable that Pooja could arrange the poison from a house belonging to a stranger. Second reason was that after consuming poison, a lonely girl could not fathom strength to hang herself. These are mere conjectures. There had to be a positive evidence that the appellant had administered poison to the deceased, which is missing. Moreover, following circumstances are assumed by the High Court, which are again unwarranted.

"i. Deceased might have fallen in love with appellant while she was a teenager, but at the age of 23 years having ambition to become IAS officer, it cannot be believed that she wanted to marry appellant.

ii. Possibility cannot be ruled out that appellant was desperately wanting to marry deceased and took her lonely place. When deceased did not agree, appellant first offered poison with Thumbs-up and later ties cable wire to the neck of the deceased and pushed her head on the wall. The appellant later put vermilion and bangles on the body of the deceased."

41. Coming to the cause of death, learned counsel for the appellant

- A had argued before us, as well as in the High Court, that as per Modi's Medical Jurisprudence & Toxicology there are 16 main distinctions in death caused by hanging or strangulation. According to medical evidence second ligature mark was ending towards back of the neck and it was oblique going upwards and ligature mark was shining. The hyoi bone was intact there was no fracture of larynx and trachea. There were no scratches, abrasions and bruises on face, mouth and ears. There were no abrasions and ecchymosed around about the edges of ligature mark. Subcutaneous tissues under ligature mark were white, hard and glistening. There were no injuries to muscles of neck. The saliva was dribbling. If the death would have been strangulation then fracture of larynx and trachea and hyoi bone was a must there should have scratches abrasions and fingernail marks and bruises on the face neck and other parts of the body. Saliva would not have dribbling, ligature mark would have been horizontal and not oblique it would have lower down in the neck and not upwards to the chin. There should have been abrasions and ecchymosed round about the edges of the ligature marks. Subcutaneous tissues should have ecchymosed there should have been some injuries to muscles of neck carotid arteries, internal coat should have been ruptured, whereas there was no such rupture. The prosecution failed to prove that the cause of death was homicidal. Dr. S.K. Pathak (PW-3) did not say that death was homicidal in nature. Post-mortem Report (Ex. P-4) also does not say that it was homicidal.

42. This aspect is not even dealt with by the High Court. Further, the alleged weapon, i.e., cable wire was not sent to CFSL and to any scientific laboratory to confirm fingerprints of the appellants. All the aforesaid factors amply demonstrate that the prosecution has not been able to bring out and prove the guilt of the appellants beyond reasonable doubt. There are lurking doubts in the story of the prosecution and many missing links which are pointed out above.

43. In the case of *Bodhraj Alias Bodha and Ors. Vs. State of Jammu & Kashmir*², this Court after quoting number of earlier judgments, held as under:

"10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence

² 2002 (8) SCC 45

[A. K. SIKRI, J.]

of the accused or the guilt of any other person. (See *Hukum Singh V. State of Rajasthan*; (1977) 2 SCC 99, *Eradu V. State of Hyderabad*; AIR 1956 SC 316 *Erabhadrapa V. State of Karnataka*; (1983) 2 SCC 330, *State of U.P. v. Sukhbasi* (1985) Suppl. SCC 79, *Balwinder Singh Vs. State of Punjab* (1987) 1 SCC 1 and *Ashok Kumar Chatterjee Vs. State of M.P.*, 1989 Suppl. (1) SCC 560). In *Bhagat Ram Vs. State of Punjab* AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy V. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus; (SCC pp. 206-07, para 21)

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances shall be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

44. We are, therefore, of the opinion that prosecution has not been able to prove the guilt of the appellant beyond reasonable doubt. As a consequence, this appeal is allowed setting aside the conviction of the appellant under Section 302 of the IPC. The appellant shall be released forthwith, if not wanted in any other case.