

A KRISHNAN  
v.  
STATE REPRESENTED BY INSPECTOR OF POLICE  
(Criminal Appeal No. 841 of 2008)  
B MAY 8, 2008  
(S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.)

*Evidence:*

C *Circumstantial evidence – Conviction based on –  
Legality of – Accused held guilty by trial court and High Court  
u/s 302/34 IPC merely on the basis of circumstantial evidence  
– No direct evidence to connect accused with commission of  
D offence – Accused neither named in complaint nor in FIR –  
Presence of accused at scene of occurrence prior to incident  
not proved – Evidence on record to the effect that accused  
had earlier appeared as a witness against police officer  
concerned – HELD: Evaluation of findings by trial court as  
E affirmed by High Court suffers from manifest error and  
improper appreciation of evidence on record – Conviction and  
sentence of accused set aside – Accused acquitted of the  
charge giving him benefit of doubt – Penal Code, 1860 – ss.  
302/34.*

F **Appellant (A-1) was prosecuted u/s 302/34 IPC with  
A-2 (the wife of A-3) for commission of murder of the wife  
of PW-1 as also u/s 380 IPC, whereas A-3 was prosecuted  
u/s 414 IPC. The prosecution case was that the family  
members of PW-1 and A-2 and A-3 used to frequently  
G quarrel on the issues of flowing of drainage water and  
parking of auto rikshaw by A-2 and A-3 in front of the house  
of PW-1. On the day of incident, wife of PW-1 was found  
missing from her house. On the following day PW-3 was  
stated to have told PW-1 that she noticed his wife lying in  
the house of A-2 and A-3 with her legs and hands tied.**

She also told PW-1 that on the previous day she had seen A-2 quarrelling with his wife. Thereupon PW-1 went to the police station and lodged a complaint. PW-18, the Inspector of Police, reached the place of occurrence, prepared 'Mahazar' and sent the body for post mortem examination. A-2 and A-3 were arrested. The Investigating Officer recorded confessional statement of A-2. At the instance of A-2 and A-3 ornaments of the deceased were recovered. Later A-1 was also arrested. According to the post-mortem report, the death was caused as a result of strangulation and asphyxia. The trial court convicted A-1 and A-2 u/s 302 r/w s.34 IPC and sentenced them to life imprisonment. A-3 was acquitted of the charge. The conviction and sentence of A-1 and A-2 was upheld by the High Court.

In the instant appeal filed by A-1, it was contended for the appellant that there was nothing to connect him with the crime or to show that he had gone prior to the incident to the house of A-2 and A-3 from where the dead body was recovered; and that he was falsely implicated in the case by the police officers, PW-17 and PW-18 since he, as a Secretary of the Workers Association and a member of Communist Party, had filed a complaint against them earlier for unnecessarily harassing the workers who had participated in the demonstration and agitations against the police and executive authorities as a result of which PWs 17 and 18 were transferred.

Allowing the appeal, the Court

HELD: 1.1 In the instant case there is no direct evidence to connect the accused with the commission of the offences, and the prosecution case entirely rests on circumstantial evidence. This Court in a series of decisions has consistently held that the conditions precedent must be fully established before conviction could be based on circumstantial evidence. [para 13] [1039-G]

- A *Gambhir v. State of Maharashtra* (1982) 2 SCC 351 :  
AIR 1982 SC 1157; *Rama Nand v. State of Himachal Pradesh*  
(1981) 1 SCC 511 : AIR 1981 SC 738; *Prem Thakur v. State*  
*of Punjab* (1982) 3 SCC 462 : AIR 1983 SC 61;  
B *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330 :  
AIR 1983 SC 446; *Gian Singh v. State of Punjab*, 1986 Suppl.  
SCC 676 : AIR 1987 SC 1921; *Balvinder Singh v. State of*  
*Punjab* (1987) 1 SCC 1 : AIR 1987 SC 350; *Hanumant Govind*  
*Nargundkar v. State of M.P.* AIR 1952 SC 3443; *C. Chenga*  
*Reddy v. State of A.P.* (1996) 10 SCC 193; *Sashi Jena & Ors.*  
C *v. Khadal Swain & Anr.* (2004) 4 SCC 236; and *Sharad*  
*Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116 :  
AIR 1984 SC 1622 – relied on.

D 1.2 A careful examination of the evidence on record  
shows that P.W.-1 did not name A-1 as an assailant of the  
murder of his wife in the complaint [Ext. P-1] lodged by  
him in the Police Station on the basis of which FIR [Ext.  
P-14] came to be registered by P.W.-18. The testimony of  
this witness has not established that A-1 was present in  
E the house of A-2 and A-3 at the time and on the day of the  
murder of his wife. On close scrutiny of the testimony of  
P.W.-3, and P.W.-6 who scribed the complaint [Ex. P-1] at  
the instance of P.W.-1, it is clear that they have not proved  
the presence of A-1 in the house of A-2 and A-3. [para 15-  
17] [1024-D-E; 1044-C-D; 1042-F]

F 2.1 P.W.-17-Sub Inspector and P.W.-18-Inspector of  
Police in their testimony stated that A-1 being a member  
of Indian Communist Party, was involved in several  
demonstrations and agitations staged by the Communist  
Party against the administration. The evidence of both  
G these witnesses is to the effect that a case was registered  
against both of them and in the said case A-1 appeared  
as a witness and deposed against them. An inquiry was  
held against them and later on they were transferred from  
the Police Station. In the teeth of the evidence of PW-17  
H and PW-18, undoubtedly they are hostile witnesses

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deposing against A-1, who appears to have been framed later on in the crime by these witnesses mainly on suspicion and improbability. PW-6, who is a member of Jammatt, admitted that in the year 1994 the Communist Party leaders and workers staged demonstrations and agitations against the administration for not arranging proper and timely supply of drinking water in which many party workers were assaulted by the police officials of Police Station where P.Ws.-17 and 18 at the relevant time were posted. [para 16 and 19] [1044-F-H; 1045-A; 1043-A-C]

2.2 There is absolutely no evidence appearing on the record to establish that A-1 had illicit relations with A-2 and/or it was the cause of murder of deceased by A-1 and A-2. In the absence of any cogent, believable and satisfactory evidence, A-1 could not be held guilty of the murder of the deceased only on hypothesis and suspicion. [Para-19] [1045-F-G]

3. On an independent analysis of the entire evidence on record, it is clear that the prosecution has failed to prove the charge of murder of the deceased against A-1 beyond reasonable doubt. There are material discrepancies, inconsistencies and vital improvements in the testimony of P.Ws.-1, 3, 4 and 5 in regard to the presence of A-1 at the house of A-2 and A-3 at the relevant time on the day of occurrence. Therefore, evaluation of the findings recorded by the trial court and affirmed by the High Court suffers from manifest error and improper appreciation of evidence on record. Thus, as on the basis of the evidence appearing on record two views are possible, A-1 is entitled to the benefit of doubt. The conviction and sentence of A-1 is set aside and he is acquitted of the charge of murder by giving him benefit of doubt. [ para 20-21] [1046-C-F]

A From the final Judgment and Order dated 7.2.2006 of the High Court of Judicature at Madras in Criminal Appeal No. 826 of 1996

B Yogesh Khanna, K. Mayil Samy and V.N. Raghupathy for the Appellant.

V.G. Pragasam, S.J. Aristotle and Prabu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

C **LOKESHWAR SINGH PANTA, J.** 1. Leave granted.

D 2. Krishnan has filed this appeal against the judgment and order dated 07.02.2006 passed by the Division Bench of the Madurai Bench of the High Court of Madras in Criminal Appeal No. 826/1996, confirming the conviction and sentence for life in respect of the offence committed under Section 302 read with Section 34 of the Indian Penal Code [for short "the IPC"] in Sessions Case No. 41/1996 dated 30.08.1996 awarded by the learned Sessions Judge, Sivaganga.

E 3. Three accused – Krishnan [A-1], Tamilarasi [A-2] and her husband Muthuraman [A-3] were charged in Sessions Case No. 41/1996 on the file of the Court of Principal Sessions Judge, Sivaganga. A-1 and A-2 were tried under Section 302 read with Section 34 of the IPC and Section 380 of the IPC. A-3 was tried under Section 414 of the IPC. The learned trial Judge held A-1 and A-2 guilty under Section 302 read with Section 34 of the IPC and sentenced them to imprisonment for life. All the accused were acquitted of the charges under Sections 380 and 414 of the IPC. A-1 challenged his conviction and sentence before the High Court in Criminal Appeal No. 816/1996 whereas A-2 preferred Criminal Appeal No. 249/1998.

G 4. Briefly stated, the case of the prosecution is as under:-

H Siddiq (P.W.-1) was residing with his wife Rasitha Begum, sisters - Amsath (Hamsath) Begum, Sabeetha Begum (P.W.-4), Faritha Begum (P.W.-5) and brother Aliyar in a rental house

at Mehbobapalayam, Minachipuram, Karaikudi. P.W.-1 is A  
working as a Cleaner in Kalakai Vadivel Murugan Lorry. On the  
southern side of the house of P.W.-1, Muthuraman (A-3), an auto-  
driver, and his wife Tamilarasi (A-2) are residing. It is the case  
of the prosecution that the family members of P.W.-1 on one B  
side and A-2 and A-3 on the other had been quarrelling frequently  
with each other upon trivial issues of flow of drainage water and  
parking of auto-rickshaw by A-3 in front of the house of P.W.-1.  
On 28.03.1995 at about 9:45 p.m., P.W.-4 went to the lorry shed  
where P.W.-1 is working and informed the latter that since  
morning hours of 28.03.1995 Rasitha Begum was missing from C  
the house. He along with P.W.-4 came to his house at about  
11:00 p.m. and started enquiring the whereabouts of his wife in  
the neighbourhood, but he could not locate her. Later on, Amsath,  
the second sister of P.W.-1, told him that in the morning at about D  
9:30 a.m. her sister-in-law (Rasitha Begum) had gone to the  
shop of a tailor master to get her blouse from him and at that  
time she was wearing a new saree. P.W.-1 went in search of  
Rasitha Begum to the shop of tailor master, Katinivaasal, New  
Road, and house of his in-laws at Devakotai, but she could not  
be located at any place. On 29.03.1995 at about 9:30 a.m., E  
P.W.-1 returned home and again made an enquiry from Smt.  
Mumtaz (P.W.-3) - a neighbour, in regard to the reason of his  
wife missing from the house. P.W.-3 alleged to have told him  
that on 28.03.1995 at about 10:30 a.m., she saw Rashita Begum  
and A-2 were quarrelling with each other, but she did not think it F  
proper to intervene since it was practically their daily habits to  
enter into heated exchanges upon petty issues. P.W.-3 also  
disclosed that on 29<sup>th</sup> morning when she along with Faritha  
Begum (P.W.-5), Fathima Beevi, and Rakhumat Biwi had  
peeped through the eastern side window of the house of A-2  
and A-3, they could notice Rasitha Begum lying on the floor of G  
their house and her both legs and hands were tied. They also  
noticed one rice bag and some household materials found  
placed upon her dead body. Thereafter, P.W.-1 went to the Police  
Station and lodged complaint [Ex. P-1], on the basis of which  
Sub-Inspector Murugan (P.W.-17) registered Crime No. 145/ H

A 95 [Ex. P-14] under Section 302, IPC in Karaikudi (North) Police Station.

B 5. Balakrishnan (P.W.-18), Inspector of the Police Station, went to the spot of incident and prepared *Mahazar* [Ex. P-4] and Death Investigation Report [Ex. P-15] in the presence of *Panchayatraras*. He prepared spot map [Ex. P-16] and recorded the statements of P.W.-1, P.W.-4, P.W.-5 and other material witnesses. On the same day, he sent the dead body of Rasitha Begum to the Government Hospital, Karaikudi, with requisition [Ex. P-2] for conducting *post-mortem*. On C 10.04.1995, P.W.-18 arrested A-2 and A-3 near Karaikudi Water Tank. The Investigating Officer recorded the confessional statement of A-2 in the presence of Govindam (P.W.-12) leading to the recovery of 22 carat black beads golden *Karukumani*. He took A-3 to Thirumurugan Amman Sannidi Jewellery Shop and recovered M.O.M. 02 [Ex. P-7] from there in the presence D of Saminathan (P.W.-13). On 18.05.1995, A-1 was taken to the Police custody from judicial custody.

E 6. Dr. Seenivasan (P.W.-2) on 29.03.1995 conducted the *post-mortem* on the dead body of Rasitha Begum and as per *Post-Mortem* Report [Ex. P-3], he noticed the following injuries:-

"External Injuries:-

- F
1. Signs of decomposition present whole body edematous except limbs.
  2. Foul smelling discharge from the nostril and mouth.
  3. Rope mark in both forearms.
  4. Left side of the face blackish with contusion and oedematous
  - G 5. Eye lids closed. Tongue outside.
  6. A handkerchief seen in the mouth.

Teeth 8/8"

H Internal Injuries:

Abdomen distended with gas. Thorax – Ribs normal; Lungs congested; Heart empty; Neck – Echymosis and congested present in anterior aspect of neck; Hyoid bone – fracture, send for H.P.E.; Stomach contains 50 ml of digested food particles; Intestine distended with gas; liver congested; spleen congested; kidney congested; bladder empty; Uterus – gravid 10 weeks size; skull contains in the left parietal region 6cm X 4 cm in size. No evidence fracture of skull. Brain partially liquefied. Specimen preserved – stomach, intestine, liver, spleen, kidney, hyoid bone.”

In the opinion of the doctor, cause of death was as a result of strangulation of the neck of the deceased and asphyxia within duration of 24 - 30 hours prior to the *post-mortem*.

7. After completion of the investigation and on receipt of the *Post-Mortem* Report [Ex. P-3] and other documents, charge sheet was laid by P.W.-18 against A-1, A-2 and A-3 for commission of the alleged crime. The learned Judicial Magistrate, Karaikudi, committed the trial to the learned Sessions Judge, who framed the charges against A-1, A-2 under Section 302 read with Section 34 of the IPC and under Section 380, IPC, for removing 14 gms. gold ornaments from the body of the deceased and A-3 was charged under Section 414, IPC. The accused denied the charges and claimed to be tried. The prosecution examined as many as 18 witnesses in support of its case. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused persons denied their involvement in the commission of the offence and stated that they have been implicated in a false case at the instance of the Police and lastly they pleaded innocence. However, no defence evidence has been led by them.

8. It is the admitted case of the parties that there is no direct evidence connecting A-1, A-2 and A-3 in the commission of the crime. The prosecution case entirely rests upon circumstantial evidence. The learned Sessions Judge relied



A upon the evidence of P.Ws.-1, 3, 4, 5, 17 and 18 and held A-1  
and A-2 guilty of the murder of Rasitha Begum and, accordingly,  
sentenced them imprisonment for life whereas they were  
acquitted under Section 380, IPC. A-3 has been acquitted for  
offence under Section 414 of the IPC for lack of cogent and  
convincing evidence against him. A-1 and A-2 filed the above  
mentioned two separate appeals under Section 374 of the Code  
of Criminal Procedure before the High Court against their  
conviction and sentence. The Division Bench of the High Court  
dismissed both the appeals by common order and confirmed  
the conviction and sentence imposed upon A-1 and A-2 under  
Section 302 read with Section 34 of IPC.

9. Krishnan (A-1) is the appellant before us in this appeal.

10. We have heard the learned counsel for the parties and  
examined the material on record.

11. Shri Yogesh Kanna, learned counsel appearing on  
behalf of A-1 assailed the judgment of the High Court *inter alia*  
contending:

(i) that the trial court as well as the High Court have  
committed gross error in convicting the appellant on  
the basis of highly unbelievable, insufficient and  
unconvincing evidence led by the prosecution;

(ii) that there is not an iota of evidence on record to  
prove that on the day of occurrence, A-1 had gone to  
the house of A-2 and A-3 before the alleged incident  
of death of Rasitha Begum, whose dead body was  
found lying in their house on 29.03.1995.

(iii) that P.W. 1 has not named A-1 in the complaint Exhibit  
P-1 on the basis of which FIR [Ex. P-14] was recorded  
by P.W. 18.

(iv) That A-1 has been falsely implicated in the  
commission of the crime by Sub-Inspector Murugan  
– P.W.-17 and Inspector Balakrishnan – P.W.-18

against whom A-1, being a Secretary of Silver Labour Association, had filed complaint in the year 1994 for unnecessarily harassing the workers of Silver Patrai who joined the demonstrations and agitations held against the owner of the Silver Patrai. According to the learned counsel, A-1 is an active member and office bearer of Communist Party of India and in the year 1994 he along with other party fellows staged demonstrations against the Police and Executive authorities regarding insufficient and inadequate supply of drinking water facilities to Karaikudi and Tirupattur areas and for the acts of commission and omissions of A-17 and A-18, they were transferred from Police Station, Karaikudi (North), but again they were posted back at the same Police Station.

12. Shri V. G. Pragasam, learned counsel for the respondent-State, on the other hand in support of the judgment, submitted that the reasons given by the trial court as well as the High Court for recording the order of conviction against A-1 are based upon proper appreciation of evidence led by prosecution in the case. He submitted that the evidence of P.Ws.-1, 3, 4 and 5 coupled with the versions of P.Ws.-17 and 18, is clear, satisfactory and with the hypothesis of the guilt of the appellant and this Court normally should be slow to interfere with the well-reasoned and well-merited judgment of the High Court upholding the judgment of the trial court.

13. Before adverting to the above-stated arguments advanced by the learned counsel for the parties, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the commission of the offences and the prosecution case entirely rests on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (i) the circumstances from which an inference of guilt is

- A sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- B (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- C (iv) 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 only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See *Gambhir v. State of Maharashtra* (1982) 2 SCC 351 : (AIR 1982 SC 1157)]
- D

See also *Rama Nand v. State of Himachal Pradesh* (1981) 1 SCC 511 : (AIR 1981 SC 738), *Prem Thakur v. State of Punjab*, (1982) 3 SCC 462 : (AIR 1983 SC 61), *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330 : (AIR 1983 SC 446), *Gian Singh v. State of Punjab*, 1986 Suppl. SCC 676 : (AIR 1987 SC 1921), *Balvinder Singh v. State of Punjab* (1987) 1 SCC 1 : (AIR 1987 SC 350).

- E
- F As far back as in 1952 in *Hanumant Govind Nargundkar v. State of M.P.* [AIR 1952 SC 3443], it was observed thus:

- G "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a
- H

chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” A

A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116 : (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are (SCC pp. 185, para 153) : B C

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; D
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; E
- (iii) the circumstances should be of a conclusive nature and tendency; F
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. G

14. 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, H

A wherein it has been observed thus: (SCC pp.206-207, 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 should 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.”

C In *Sashi Jena & Ors. v. Khadal Swain & Anr.* [(2004) 4 SCC 236], this Court again reiterated the well-settled principle of law on circumstantial evidence.

D 15. Bearing the above principles of law enunciated by this Court, we have scrutinized and examined carefully the circumstances appearing in this case against A-1. P.W.-1, the husband of Rasitha Begum-deceased had not named A-1 as an assailant of the murder of his wife in the complaint [Ex. P-1] lodged by him in the Police Station on the basis of which FIR [Ex. P-14] came to be registered by P.W.-18. It is his evidence that he disclosed the names of the assailants and other material details of the crime to P.W.-6, who scribed the complaint at his instance. P.W.-1 went to the Police Station with his brother, brother-in-law and P.W.-6 and reported the matter to P.W.-18, but he again did not name A-1 as an accused along with A-2 and A-3 against whom complaint was made. The testimony of this witness has not established that A-1 was present in the house of A-2 and A-3 at the time and on the day of the murder of his wife.

G 16. P.W.-6 in his deposition stated that at about 10:00 or 10:30 a.m. on the day of incident of murder of Rasitha Begum, he was standing near Ambedkar statue at Karaikudi when P.W.-1 and his brother-in-law Jagir Hussain came to him and told that his wife was dead and her dead body was lying in the house of A-2 and A-3. He scribed complaint [Ex. P-1] at the instance

of P.W.-1 in the latter's house. He admitted in his cross-examination that after writing complaint [Ex. P-1], the same was read over to P.W. 1 who after accepting the contents thereof as correct signed it. This witness is a member of *Jammat*. He admitted that in the year 1994 the Communist Party leaders and workers staged demonstrations and agitations against the administration for not arranging proper and timely supply of drinking water from Karaikudi to Tirupattur in which many party workers were assaulted by the police officials of Police Station, Karaikudi, where P.Ws.-17 and 18 at the relevant time were posted. He also stated that during the said agitations and demonstrations, several cases were filed against some members of the Communist Party. It has come in his evidence that complaint [Ex. P-1] was written by him in the house of P.W.-1, whereas it was the specific case of P.W.-1 that Ex. P-1 was got scribed by him from P.W.-6 on the way when he along with his brother Aliyar and brother-in-law Jagir Hussain was going to the Police Station to lodge the complaint. Both these witnesses are not consistent and have given different and contradictory version in regard to the place of scribing of the complainant, on the basis of which the police machinery swung into action.

17. The evidence of P.W.-3 – Mumtaz would show that the family members of P.W.-1 on one side and A-2 and A-3 on the other had been quarrelling frequently with each other over flow of drainage water and parking of auto-rickshaw by A-3 in front of the house of P.W.-1. Her evidence would also reveal that at about 10:00 a.m. on the day of incident of murder, the deceased and A-2 had heated exchanges over throwing of drainage water in front of the house of A-2 and it was on the intervention of A-3 that the matter was got settled. She stated that around 3:00 p.m., it came to the notice of the family members of P.W.-1 that Rasitha Begum was not found present in her house. The intimation about the missing of Rasitha Begum was sent to P.W.-1, who was away from his house in connection with his employment at the lorry shed. It is her evidence that on the

A morning of 29.03.1995, dead body of Rasitha Begum was found lying inside the house of A-2 and her both hands and legs were tied with ropes and one rice bag and other household materials were found placed upon her body. She along with P.W.-Faritha, Fathima Bibi and some more persons informed P.W.-1 about the incident, who rushed to the place of occurrence and on seeing the dead body of his wife inside the house of A-2, he went to police station for reporting the incident of murder. In cross-examination, she admitted that P.W. 1 is her cousin. This witness admitted that the death of Rasitha Begum was discussed in Jammatt meeting. She admitted having joined the demonstration and procession on the leadership of Palani Baba. On close scrutiny of the testimony of P.W.-4, we find that she has not proved the presence of A-1 in the house of A-2 and A-3 when this witness saw Rasitha Begum going to their house in the morning at about 10:30 a.m. on the day of incident of murder.

18. P.W.-4 stated to have informed her brother P.W.-1 at about 9:00 p.m. on 28.03.1995 about missing of her sister-in-law from their house. She claimed to have seen A-1 in his Silver Workshop on the day of incident of murder. P.W.-5 Faritha Begum is residing nearby the house of P.W.-1 and her house is adjacent to the house of A-3. She also stated that A-1 is running a workshop nearby her house. On the morning of 29.03.1995, she noticed dead body of Rasitha Begum in the house of A-2 and A-3.

19. P.W.-17-Sub Inspector and P.W.-18-Inspector of Police in their testimony stated that A-1 being a member of Indian Communist Party, was involved in several demonstrations and agitations staged in Karaikudi area by the Communist Party against the administration. It is the evidence of P.W.-18 that in the year 1994 all political parties had demonstrated against the civil administration for inadequate and improper supply of drinking water facility from Karaikudi to Tirupattur and in the said agitation, members of Indian Communist Party including A-1, had also participated in which one Kannan, a member of Congress Party, received beatings. He admitted that a case

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OF POLICE [LOKESHWAR SINGH PANTA, J.]

was registered against him regarding handcuffing of Kannan and in the said case A-1 appeared as a witness and deposed against him. P.W.-18 then stated that RTO also held enquiry about the same incident in which one Ramachandran, a member of Indian Communist Party, Karaikudi, deposed against him. P.W.-17 has admitted in cross-examination that during strike staged by all political parties in 1994, some demonstrators received injuries at the hands of Police Force. For the said incident, an inquiry was held by RTO against him and PW-18, who at the relevant time were Incharge of the Police Station and later on they were transferred from the Police Station, Karaikudi. He then stated that a criminal case was also registered against him and PW-18 for the same incident, in which A-1 appeared as a witness and deposed against them. In the teeth of the evidence of PW-17 and PW-18, undoubtedly they are hostile witnesses deposing against A-1, who appears to have been framed later on in the crime by these witnesses mainly on suspicion and improbability. The learned trial Judge observed that even though there was no direct evidence to prove that A-1, in connivance with A-2, committed the murder of Rashita Begum, but since A-1 had illicit relations with A-2 and on the day of incident of murder, after A-3 had left his house, A-1 was seen by the deceased going to the house of A-2 and out of curiosity, the deceased went to the house of A-2 where she was jointly killed by A-1 and A-2. This finding of the learned trial Judge and as accepted by the High Court, in our view, is wholly untenable and cannot be sustained. There is absolutely no evidence appearing on the record to establish that A-1 had illicit relations with A-2 and in the absence of any cogent, believable and satisfactory evidence, A-1 could not be held guilty of the murder of the deceased only on hypothesis and suspicion. If the entire incident was narrated by PW-4 to her brother PW-1 before lodging a complaint (Ext. P-1) by him, it was but natural for PW-1 to have disclosed the name of A-1 in the complaint as an assailant, on the basis of which FIR (Ext. P-14) was registered by PW-18. The evidence of P.W.-3, P.W.-4 and P.W.-5 regarding removing of jewellery from the dead body of Rasitha Begum by A-1 and

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- A A-2 coupled with the version of P.Ws.-14 and 18 and the confessional statement allegedly made by A-1, was not found believable and reliable by the learned trial Judge and accordingly they were acquitted of the charge under Section 380, IPC. On the same set of evidence, no acceptable evidence was found
- B against A-3 for holding him guilty of offence under Section 414, IPC, and he has been given benefit of doubt.

20. On independent analysis of the entire evidence on record, we find that the prosecution has failed to prove the charge of murder of Rasitha Begum against A-1 beyond
- C reasonable doubt. As noticed in the earlier part of the judgment, we find material discrepancies, inconsistency and vital improvements in the testimony of P.Ws.-1, 3, 4 and 5 in regard to the presence of A-1 at the house of A-2 and A-3 at the relevant time on the day of occurrence. Having given our careful
- D consideration to the submissions made by the learned counsel for the parties and in the light of the evidence discussed above and tested in the light of principles of law highlighted above, it must be held that the evaluation of the findings recorded by the trial court and affirmed by the High Court suffers from manifest
- E error and improper appreciation of evidence on record. Thus, on the basis of the evidence appearing on record, two views are possible, A-1 is entitled to the benefit of doubt.

21. In the result, the appeal is allowed. The conviction and sentence of A-1 is set aside and he is acquitted of the charge
- F of murder of Rasitha Begum by giving him benefit of doubt. Appellant-Krishnan is in custody and he is directed to be released forthwith if his detention is not required in any other case.

- G R.P. Appeal allowed.