frontal to the parietal area. The injury was caused with such great force that the skull broke into many pieces and the brain matter had come out of the skull.

11. The question is whether the death of the deceased could be attributed to the injury caused by the appellantA1. The appellant is alleged to have used the *Sammatti* (hammer) and he gave a blow at the back of the head or on the neck of the deceased. Both the injuries do not correspond with the injury of the back of the head or neck. These injuries can be related to the attack made by A2Rajendran, A3 and A4, who have alleged to have used iron rods. Unfortunately, A3 and A4 have been acquitted and A2 has only been convicted for causing simple injury with a weapon. Furthermore, since only one accused is left, we cannot take recourse to the provisions of Section 34 or Section 149 IPC.

12. In view of the above, we give benefit of doubt to the appellant no.1, acquitting him of the offence of murder but convict him under Section 324, IPC. The appellant has already undergone sufficient punishment for that offence and, therefore, his sentence is modified to the period already undergone by him. The appellant is on bail, his bail bonds are discharged. The appeal is partly allowed in the aforesaid terms. Application(s), if any, shall also stand dismissed.

***Result*:-** Appeal partly allowed.

ABC 2019 (III) 233 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(A.M. Khanwilkar & Dinesh Maheshwari, JJ)

Criminal Appeal No. 1046 of 2010

(From Punjab and Haryana High Court)

Decided on 19 September 2019

SMT. GARGI ***- Appellant(s).***

Versus

STATE OF HARYANA ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860, Section 302 — Murder of husband — Conviction under — no direct evidence — Homicidal death — Allegation of —deceased had strained relations with his wife — illicit relations & insistence of transfer of property in her name— deceased had expressed, imminent danger to his life at the hands of his wife— last seen evidence — accused was at home

during the relevant period — Testimony of witnesses doubtful — Material improvements by IO — Defence of accused — the property & money — the cause for the family of the deceased implicating her — No direct & cogent evidence regarding illicit relations of accused — or she was forcing the deceased to transfer the property — the investigation was carried out either with pre-conceived notions — or with a particular result in view — not accepted that investigation was fair & impartial — omissions on the part of investigating agency —adverse inferences against the prosecution drawn — crime committed by some other person than the accused not ruled out — benefit of doubt — Acquittal. (Para 11.1, 15.7, 24 & 25)

(B) Indian Penal Code, 1860 — Section 302 — Opinion of the medical board — cause of death — "asphyxia due to strangulation"— Surrounding factors —feet of the hanging dead body were touching the floor— knees were bent— slippers were not removed— room was wide open— Held, with such categorical medical opinion coupled with all the relevant features — it is difficult to say that it had been a case of suicide merely because hyoid bone was not broken or because the marks of resistance like abrasions/scratches were not reported — deceased was done to death by strangulation and thereafter, his dead body was hanged from the ceiling fan in the room. (Para 18.1)

(C) Judicial proceedings — Standard of proof — Direct evidence vis-à-vis Circumstantial evidence — The direct evidence proves the existence of a particular fact that emanates from a document or an object and/or what has been observed by the witness — The circumstantial evidence is the one whereby other facts are proved from which the existence of fact in issue may either be logically inferred, or at least rendered more probable. (Para 10)

(D) Criminal trial — Circumstantial evidence — Interpretation of — Such facts & surrounding factors which do point towards the complicity of the charged accused. (Para 13.5)

(E) Criminal trial — Chain of circumstances — Interpretation of — unquestionable linking of the facts & the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis. (Para 13.5)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Receipt of information — no Evidence regarding time of receipt of information about dead body, by what mode, & through whom — Evidence of witness — he received information through "telephonic

message" but did not state the particulars — No entry in the roznamcha or general diary produced — fatal to prosecution case. (Para 15.1)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Receipt of information & investigation — The investigating agency did not carry out any investigation & did not record any statement question a long period of about 4 to 5 hours at the site — not explained — defective investigation. (Para 15.1)

(H) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Receipt of information — DW specifically testified — he went to the police station, divulged the information & accompanied the police to the site — Evidence of PW — he got the information from a person — who, in turn, had received the information on telephone from a colleague of the deceased — Neither any enquiry was made from the said person — nor any other effort was made to find out the colleague of the deceased who had telephoned him — gap in the evidence — Held, no reason to disbelieve the testimony of DW — not explained as to why the information given by him was not reduced in writing & the proceedings were not conducted on that basis — fatal to prosecution case. (Para 15.1, 15.2 & 15.3)

(I) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Panchnama — Delay in preparing — prepared only after reaching of the complainant—fatal to prosecution. (Para 15.4)

(J) Indian Evidence Act, 1872 — Section 3 — Relevant fact — failure to record statement of material witness — It is also not clear as to why the statements of the children of the deceased were not taken they were very much present at the site—fatal to prosecution. (Para 15.4)

(K) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Conduct of investigating officer — failure to enquire the neighbours, who were available at the site — & the tenant, who was residing at the ground floor of the same building — Held, it is difficult to say that the conduct of this IO had been totally free from doubt. (Para 15.4)

(L) Indian Evidence Act, 1872 — Section 3 — Relevant fact — defective investigation — obtaining of fingerprints — the prints were not obtained even though the fingerprint expert visited the site — Held, IO did not take even elementary care to obtain fingerprints from the material objects and to get them analysed properly —fatal to prosecution. (Para 15.6)

(M) Indian Evidence Act, 1872 — Section 3 — Relevant fact — withholding of relevant witness — Witnesses were cited but were not

examined them before the Court — Held, withholding of relevant witnesses could only lead to further adverse inference that — if examined, they would not have supported the prosecution case. (Para 16)

(N) Indian Evidence Act, 1872 — Section 3 — Relevant fact — failure to independent witness — the investigating agency avoided to include any independent witness in the investigation — did not carry out necessary enquires from the persons other than in-laws of the appellant—fatal to prosecution. (Para 16).

(O) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Absence of fracture of hyoid bone — Held, would not lead to the conclusion that the deceased did not die of strangulation. (Para 18)

(P) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Act of strangulation — Marks of resistance on the body of the deceased — Held, The presence of marks of resistance would depend on a variety of factors— including the method & manner of execution of the act of strangulation by the culprits— mere want of such marks cannot be decisive of the matter. (Para 18.1)

(Q) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Medical jurisprudence — Strangulation — Held, it is not laid down as an absolute rule that in all cases of strangulation, hyoid bone would invariably be fractured — only in a fraction of such cases, a fracture of hyoid bone is found. (Para 18.1)

(R) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Condition & Conduct of witness — he had never been in a settled job or occupation—the ancestral house of the family was sold by him & the proceeds were utilised by him — taken loan — defence of accused that the witness was pressurising her to stand as a guarantor — Held, the testimony of the witness is required to be approached with extra care and caution. (Para 22.1)

(S) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Conduct of witness — contention of the witness (brother of the deceased) — the deceased stated his apprehensions about his life — the witness did not accompany him for safety & support — did not share the apprehensions with other members of the family — did not enquire about the welfare of his brother for next three days —Held, the conduct of witness not free from doubt — his statement cannot be accepted without proper corroboration. (Para 22.2.1)

(T) Indian Evidence Act, 1872 — Section 32 — Dying declaration — Statement made to the family member by the deceased

— Held, at time of making of such statement, the deceased was not labouring under his imminent death — & he was not recounting the circumstance of the transaction relating to his death — the statement could not have been taken as a 'dying declaration'. (Para 25)

(U) Criminal trial — Defence witness — testimony of — Nothing has occurred in his cross-examination to discredit this witness as untrustworthy — Held, reliable. (Para 25.1)

(V) Indian Evidence Act, 1872 — Section 106 — Last seen theory — Accused & deceased were wife & husband — staying under the same roof — Held, such companionship does not mean that a presumption of guilt of the appellant is to be drawn. (Para 28.1)

(W) Indian Evidence Act, 1872 — Section 106 —Burden of proving fact especially within knowledge — Held, Section 106 does not absolve the prosecution of its primary burden. (Para 28.1)

(X) Indian Evidence Act, 1872 — Section 106 — Last seen theory — Postmortem report — probable time of death was 24 to 72 hours prior — Held, the gap between the point of time when the appellant & deceased were last seen together & when the deceased was found dead — had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. (Para 28.2 & 28.3)

(Y) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Conduct of accused — Did not stay with the dead body of the deceased husband — the corpse was emitting foul smell — no fault could be foisted on the appellant if she did not remain with the dead body all through. (Para 29)

(Z) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Subsequent conduct of accused — attended her office after the death of the deceased while he was hanging dead — Held, it is not the case of the prosecution that during these two days, any abnormality in her behaviour was noticed by anyone — the accused neither concealed herself nor altered the scene of crime in any manner — No evidence about any oddity in her manners & demeanour. (Para 29)

(AA) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Effect of the acquittal of co-accused persons — dead body was found hanging — Accused could not have hanged the dead body by the ceiling fan — the act had definitely been performed by more than one person — Acquittal of co-accused — Held, High Court failed to consider that an important link in the prosecution story was snapped as soon as the co-accused were acquitted. (Para 31)

Facts:- *The appellant was charged with the imputations that she killed her husband by strangulation and, with the help of co-accused persons (her brothers), hanged the dead body in one of the rooms in the house, as if it were a case of suicide. The matter rested on circumstantial evidence where, according to the prosecution, the relations of the deceased-husband and the appellant-wife were too strained; the deceased had stated threat perceptions that his wife might kill him, for she was involved in illicit relations and was desirous of grabbing his property. Two of the siblings of deceased testified in support of the prosecution case. The appellant, while denying the imputations, took the plea that she was leading a happy married life with her husband for 18 -19 years with two children; and that the brother of the deceased, on whose statement FIR was registered and who was the prime prosecution witness, was carrying the ill-intentions to grab the property of her husband and had managed her prosecution. The Trial Court convicted all the accused persons while accepting the prosecution case and rejecting the defence version. In appeal, the High Court, though found that the circumstances brought on record were not sufficient to bring home the charge of conspiracy against the brothers of the appellant and acquitted them but, affirmed the findings against the appellant and maintained her conviction for the offence of murder of her husband. In this appeal the honourable Supreme Court acquitted the appellant giving her benefit of doubt..*

Law of relief:- ***(i) In a case based on circumstantial evidence, an important link in the prosecution story gets snapped with the acquittal of co-accused.***

(ii) If at time of making of statement, the deceased was not labouring under his imminent death & he was not recounting the circumstance of the transaction relating to his death, the statement cannot be been taken as a 'dying declaration'.

Held:- In other words, what is argued in this case for the prosecution is that the entire chain of causation has been established beyond all reasonable doubts. It is submitted that the evidence on record has clearly brought forth the following major factors against the appellant:-

a) that the death of the deceased was homicidal in nature and it had not been suicidal as was sought to be projected by the culprits by hanging the dead body from a rope;

b) that the deceased had strained relations with his wife, the appellant, for she was indulgent in illicit relations and was insistent on transfer of property in her name;

c) that the deceased was having, and had expressed, imminent danger to his life at the hands of his wife, the appellant;

d) that the deceased was last seen with the appellant and she had failed to explain as to how the deceased met with his end; and

e) that as per the post-mortem report, death had occurred 24 to 72 hours before post-mortem examination on 02.05.1997 and the appellant was at home during this period, as she was admittedly on leave on 28.04.1997 and 29.04.1997.(Para-11.1)

Thus, circumstantial evidence, in the context of a crime, essentially means such facts and surrounding factors which do point towards the complicity of the charged accused; and then, chain of circumstances means such unquestionable linking of the facts and the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis.(Para-13.5)

The manner of dealing with this case by the investigating agency, right at the inception, has left a few serious questions unanswered i.e., as to when did the police receive information about dead body of the husband of the appellant, by what mode, and through whom? PW-9 in his testimony before the Court conveniently stated that such an information was received through "telephonic message" but did not state the particulars of such informant. No entry in the *roznamcha* or general diary has been produced to show that such an information was duly entered in the record before proceeding for investigation. Significantly, in the first note drawn up in the matter at 5.30 a.m. on 02.05.1997 (EX. PH/1), PW-9 only stated that 'the information was received at the police station'. The fact that it had been a telephonic information is conspicuously missing in Ex.PH/1. This aspect has got a material bearing in the matter because the defence witness DW-3 specifically testified to the fact that he was the first person informed by the appellant about the demise of Tirloki Nath; and that he went to the police station at about 9.30 p.m. on 01.05.1997 and divulged the information. He further asserted having accompanied the police to the site and having conveyed the information to PW-7. (Para-15.1)

It is also noteworthy that as per PW-7, he got the information from one T.R. Malhotra at about 11.30 p.m. who, in turn, had received the information on telephone from a colleague of the deceased. Neither any enquiry was made from the said T.R. Malhotra nor any

other effort was made to find out the colleague of the deceased who had telephoned him. (Para-15.2)

In the face of such a gap in the prosecution evidence, there appears no reason to disbelieve the testimony of DW-3 Surinder Kumar Bhat as regards the time of information to police and himself being the informant. In such a scenario, it remains absolutely inexplicable as to why the information given by DW-3 was not reduced in writing and the proceedings were not conducted on that basis. This question magnifies itself to tougher questions for the prosecution as to the time when PW-9 ASI Amar Singh reached the site and with whom. From the evidence on record and surrounding facts, it appears that the said ASI had reached the site at around 10.30 p.m. accompanied by DW-3 Surinder Kumar Bhat. The toughness of these questions further amplifies into the harder, and unanswered, question for the investigating agency as to why for a long period of about 4 to 5 hours at the site, the ASI (PW-9) did not carry out any investigation and did not record any statement. (Para-15.3)

It is also not clear as to why the statements of the children of the deceased were not taken when his daughter, 16 years of age, was very much present at the site. It is also not explained as to why in this kind of matter, carrying suspicious overtones, PW-9 did not make any enquiry from any of the neighbours, who were available at the site; and from the tenant, who was residing at the ground floor of the same building and whose washroom was allegedly being used by the deceased (as per the assertion of PW-8)? It is difficult to say that the conduct of this Investigating Officer (PW-9) had been totally free from doubt. (Para-15.4)

Moreover, in this matter, where it was *prima facie* appearing that the clues available at the site might play a significant role in reaching to the real culprits, it is also intriguing to notice that the Investigating Officer did not take even elementary care to obtain fingerprints from the material objects and to get them analysed properly. The Investigating Officer (PW-10) has stated, rather with impunity, that he did not take any fingerprints at all, even while admitting that the fingerprint expert did visit the site. It is not stated that the so-called expert expressed inability to collect such prints for any reason. It is left only for one to wonder as to for what purpose did the so-called fingerprint expert visit the site, if no prints were to be taken at all! (Para-15.6)

The above-mentioned unexplained shortcomings, perforce, indicate that in this case, the investigation was carried out either with pre-conceived notions or with a particular result in view. It is difficult to accept that the investigation in this case had been fair and impartial. From another viewpoint, on the facts and in the circumstances of this case, the omissions on the part of investigating agency cannot be ignored as mere oversight. These omissions, perforce, give rise to adverse inferences against the prosecution. (Para-15.7)

In this case, it is also interesting to notice that though the prosecution had cited the other relations of the deceased as witnesses, including his mother and brother-in-law (husband of PW-8 - who had otherwise signed the inquest report) but did not examine them before the Court. Withholding of relevant witnesses could only lead to further adverse inference that if examined, they would not have supported the prosecution case. This is apart from the fact that the investigating agency avoided to include any independent witness in the investigation and did not carry out necessary enquires from the persons other than in-laws of the appellant. (Para-16)

Both the Courts came to this conclusion essentially with reference to the medical opinion that the cause of death was asphyxia due to strangulation; and also with reference to some of the surrounding factors that the feet of the hanging dead body were touching the floor; the knees were bent; the slippers were not removed; and the room in question was wide open. Assailing such findings, it is contended on behalf of the appellant that as per medical jurisprudence, scratches, abrasions, bruises etc. are usually present and hyoid bone would be usually found broken in case of strangulation but, in the present case, there were no such marks nor hyoid bone was broken. (Para-18)

The board had undoubtedly been of the opinion that the cause of death was "*asphyxia due to strangulation*". With such categorical medical opinion coupled with all the relevant features surrounding the suspended dead body in the room in question, it is difficult to say that it had been a case of suicide merely because hyoid bone was not broken or because the marks of resistance like abrasions/scratches were not reported. The presence of marks of resistance would depend on a variety of factors, including the method and manner of execution of the act of strangulation by the culprits; and mere want of such marks cannot be decisive of the matter. Equally, it is not laid down as

an absolute rule in medical jurisprudence that in all cases of strangulation, hyoid bone would invariably be fractured. On the contrary, medical jurisprudence suggests that only in a fraction of such cases, a fracture of hyoid bone is found. In other words, absence of fracture of hyoid bone would not lead to the conclusion that the deceased did not die of strangulation. (Para-18.1)

The Trial Court and the High Court have proceeded on the assumption that PW-7 being the brother of deceased, would not be interested in shielding the real culprit and to unnecessarily throw the accusation on the appellant but, in our view, such an approach had been fundamentally incorrect. In overall comprehension of the statement made by this witness, a few relevant factors are immediately noticeable that, after having served in Navy for about two years from 1978 to 1980, he had never been in a settled job or occupation. He served in different establishments; also opened a grocer's shop that was closed; again served in some more establishments; and then, established a factory that too was closed with about half of the amount of loan repaid and remaining being due. Significantly, the ancestral house of the family was sold by this witness and the proceeds were utilised by him in opening the grocer's shop, which was closed by him because he '*did not like that business*'. He had taken loan for establishing the factory and it had been the case of the appellant that he was pressurising her to stand as a guarantor and upon her refusal, the deceased Tirloki Nath stood as a guarantor. DW-3 Surinder Kumar Bhat, a colleague of the deceased, testified to the fact that the deceased remained disturbed for his younger brother (PW-7) regularly demanding money from him; and has narrated in detail the efforts that were made by the deceased in helping PW-7 Brij Bhushan getting some employment and he even asked for a loan from the society managed by DW-3. In the given state of affairs, this much is clear that the testimony of PW-7 is required to be approached with extra care and caution. (Para-22.1)

Even if the aforementioned aspects are left aside for a moment and it be assumed that the deceased met PW-7 on 28.04.1997 and stated all his apprehensions as also the plan to leave Panchkula with luggage, it remains entirely inexplicable that such a concerned brother of the deceased did not accompany him to Panchkula for safety and support; and did not share the apprehensions stated by the deceased with other members of the family; and even did not enquire about the welfare of his brother for next three days. Obviously, the

conduct of this witness had not been altogether free from doubt and his statement cannot be accepted without proper corroboration. Now, the attempted corroboration is suggested only with reference to the statement of the sister of this witness viz., PW-8 Radha Puri. However, her testimony carries excessive features of doubts, as would occur *infra*. (Para-22.2.1)

A combined look at the testimony of PW-7 and PW-8 brings to the fore one of the significant facts that there had been an ancestral house belonging to the family that was sold by PW-7 alone and the sale proceeds were utilised by him to open a grocery shop, one of the multiple ventures he had tried, mostly resulting in closure or failure. The appellant had been categoric in her assertion that the property and money had been at the root of discord in the family and the same had been the cause for the family of the deceased implicating her. DW-3 has also testified to the effect that the deceased had his tense moments because of money demands of his brother i.e., PW-7. Unfortunately, the Trial Court as also the High Court have totally overlooked these factors and features hovering over the prosecution story. (Para-24)

Going further deep into the prosecution story, it is clear that there is no direct and cogent evidence on record that the appellant was involved in illicit relations or was forcing the deceased to transfer the property. It had not been the assertion of PW-7 or PW-8 that the alleged illicit relations of the appellant and/or her pressurising the deceased to transfer the property had been the matters of their personal knowledge. No particulars of any person having illicit involvement with the appellant are to be found on record. Such assertions have been made by these witnesses on the basis of the statements allegedly made by the deceased to each of them individually and at different point of time. The High Court and the Trial Court have readily accepted the suggestions of PW-7 and PW-8 that the deceased made the statements to them as alleged; and have even labelled the statement allegedly made to PW-7 as being the dying declaration of the deceased. Strictly speaking, the alleged statement made to PW-7 could not have been taken as a 'dying declaration' for the reason that at time of making of such statement, the deceased was not labouring under his imminent death and he was not recounting the circumstance of the transaction relating to his death. Even if it be assumed that the statement made by the deceased, before the cause of death had arisen, or before he had any reason to anticipate his killing, may also be taken as admissible, Vide ***Pakala Narayana Swami v. The King-Emperor: AIR 1939 PC 47*** such an alleged statement cannot

be directly acted upon without concrete corroboration. In the present case, what to say of corroboration, even making of such statement by the deceased appears to be doubtful. (Para-25)

The other prosecution witnesses have not even remotely indicated any traces of discord in the relations of the deceased and the appellant for any reason whatsoever. The appellant has specifically refuted such allegations in her statement under Section 313 CrPC. The defence witness DW-3 Surinder Kumar Bhat, who had been the colleague of the deceased and was living nearby, has been categorical that the deceased and the appellant were maintaining good relations and that the appellant was enjoying a good reputation. Nothing has occurred in his cross-examination to discredit this witness as untrustworthy. Another noteworthy factor emerges from the testimony of DW-4 Akhilesh Bhatnagar, Assistant, Oriental Insurance Company, Chandigarh. He has proved the hotel expenses bills paid by the employer of the deceased for his stay at Karnal from 14.01.1997 to 01.02.1997. If that were so, the assertion of PW-8 Radha Puri that the deceased made some statement to her at Yamuna Nagar on 25.01.1997 becomes doubtful. As noticed, though the husband of PW-8 (with whom she allegedly conferred about the alleged statement of the deceased) was cited as prosecution witness but was not examined in the Court. (Para-25.1)

Insofar as the 'last seen theory' is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act 106. **Burden of proving fact especially within knowledge.**- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden. The dead body was recovered on 01.05.1997 and as per post-mortem report, the probable time that had elapsed between death and postmortem (on 02.05.1997 at 12.30 p.m.) was 24 to 72 hours. On the basis of this opinion, it cannot be assumed by way of arithmetical calculation that

the deceased might have met with his end on 29.04.1997. The possibility of it being a day later is not ruled out. (Para-28.2)

In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In the given circumstances, no fault could be foisted on the appellant if she did not remain with the dead body all through and until arrival of PW-8. The expression 'enjoying tea' was coined by this witness PW-8 alone and for want of corroboration and for omission of such a fact in the police statement, there appears no reason to accept the same. If at all anything of subsequent conduct of appellant is to be taken into consideration, it is evident that she attended her office on 30.04.1997 and 01.05.1997. It is not the case of the prosecution that during these two days, any abnormality in her behaviour was noticed by anyone. The appellant neither concealed herself nor altered the scene of crime in any manner and there had not been any evidence about any oddity in her manners and demeanour. (Para-29)

There is yet another lacuna in the prosecution case that has magnified itself with acquittal of the co-accused, brothers of the appellant. It cannot be denied that if the appellant had been the killer, she, by herself, could not have hanged the dead body by the ceiling fan; and the act had definitely been performed by more than one person. That being the position, the Trial Court readily accepted the case against the brothers of the appellant as conspirators without cogent and convincing evidence. The High Court rightly acquitted them for want of evidence and even observed that the prosecution had failed to book the real culprit in place of the brothers of the appellant. However, the High Court yet considered it proper to maintain the conviction of the appellant as the principal culprit while failing to consider that an important link in the prosecution story was snapped as soon as brothers of the appellant were acquitted. (Para-31)

Counsel:- ***For Appellant(s):*** *S. Janani, Adv.*
For Respondent(s): *Monika Gusain, Adv.*

Cases Referred:-

1. *Rajkumar v. State of M.P.: (2004) 12 SCC 77, (Para-8.5)*
2. *Sonvir alias Somvir v. The State (NCT of Delhi): (2018) 8 SCC 24, (Para-8.5)*

3. *Ramesh and Ors v. State of Rajasthan: (2011) 3 SCC 685, (Para-8.5)*
4. *SK. Yusuf v. State of West Bengal: (2011) 11 SCC 754, (Para-8.5)*
5. *Sawal Das v. State of Bihar: (1974) 4 SCC 193, (Para-8.5)*
6. *Chandmal and Anr. v. State of Rajasthan: (1976) 1 SCC 621, (Para-13.2)*
7. *Sharad Birdhichand Sarda v. State of Maharashtra: (1984) 4 SCC 116, (Para-13.3)*
8. *Hanumanth v. State of Madhya Pradesh: AIR 1952 SC 343, (Para-13.3)*
9. *Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] , (Para-13.3)*
10. *Ramesh v. State of Rajasthan (2011) 3 SCC 685, (Para-13.4)*
11. *Pakala Narayana Swami v. The King-Emperor: AIR 1939 PC 47, (Para-25)*

JUDGMENT

DINESH MAHESHWARI, J.: - 1. This appeal by special leave is directed against the common judgement and order dated 05.03.2008 *in Criminal Appeal Nos. 341-DB of 1998* and 359-DB of 1998. whereby, the High Court of Punjab and Haryana at Chandigarh has partly affirmed the judgment and order dated 09.06.1998 in Sessions Case No. 63 of 1997 by the Additional Sessions Judge, Ambala; and has upheld the conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code ('IPC') even while acquitting the co-accused persons of the charge under Section 302 read with Section 120-B IPC.

1.1. In a brief outline of the material aspects, it may be noticed that in the present case, the appellant was charged with the imputations that she killed her husband by strangulation and, with the help of co-accused persons (her brothers), hanged the dead body in one of the rooms in the house, as if it were a case of suicide. The matter rested on circumstantial evidence where, according to the prosecution, the relations of the deceased (husband) and the appellant (wife) were too strained; the deceased had stated threat perceptions that his wife might kill him, for she was involved in illicit relations and was desirous of grabbing his property. Two of the siblings of deceased, one brother and one sister, testified in support of the prosecution case. *Per contra*, the appellant, while denying the imputations, took the plea that she was leading a happy married life with her husband for 18-19 years with two children; and that the brother of the deceased, on whose statement FIR was registered and who was the prime prosecution witness, was carrying the ill-intentions to grab the property of her husband and had managed her prosecution. The Trial Court convicted all the accused persons while accepting the prosecution case and rejecting the defence version. In

appeal, the High Court, though found that the circumstances brought on record were not sufficient to bring home the charge of conspiracy against the brothers of the appellant and acquitted them but, affirmed the findings against the appellant and maintained her conviction for the offence of murder of her husband. Hence, this appeal.

The relevant facts and background aspects

2. Put in brief, the prosecution case had been that on 01.05.1997, having received information that a man had committed suicide in House No. 1297, Sector-15, Panchkula, ASI Amar Singh (PW-9), accompanied by UGC Bidhi Chand and UGC Baldev Singh, reached the spot at about 11.30 p.m., *At what time did the police and the complainant receive this information, by which mode of communication, and through whom, are some of the questions having bearing in this matter, as shall be noticed hereafter later*. only to find that in the room on the second floor of house, the deceased Tirloki Nath, husband of the appellant, was hanging by neck with his feet touching the floor. They also found that a pool of blood had collected near the dead body; and that the dead body was emitting bad odour. The appellant and her children were in the same house, but on the first floor.

2.1. At about 4.30 a.m. of 02.05.1997, i.e., nearly five hours after the police having arrived, the complainant Brij Bhushan Kaul (PW-7), brother of the deceased, reached the spot with his wife, mother, sister's husband and sister Smt. Radha Puri (PW-8). The complainant made the statement that relationship of the deceased and the appellant was too strained due to which, they were residing in separate rooms in the same house; that the appellant had been ill-treating her husband, which included restricting his use of bathroom facilities in the same house; that the deceased had once expressed his fear that the appellant would leave the gas cylinder open with the intention to kill him; and that the deceased had also stated that '*the character of his wife was bad*' and she was living '*with bad women*'. The complainant also stated that on 28.04.1997, the deceased came to his house (at Ambala Cantt.) and told him that he would go to Panchkula and would come back with his luggage as he was '*very much fed up and frightened*'. The complainant further stated that in the night of 01.05.1997 at about 11.30 p.m., he received a message that his brother had passed away and thereupon, he arrived at the house of the deceased accompanied by his mother, wife, sister and brother-in-law, only to find the deceased in the condition as described hereinabove.

While concluding, the complainant stated his suspicion that the appellant had murdered his brother because the deceased had not transferred his house as per her demands.

2.2. For the incident in question, FIR No. 174 dated 02.05.1997 was registered on the basis of the statement so made by the complainant. In the preliminaries, the inquest report (Ex. PH/2) was prepared by ASI Amar Singh (PW-9); rough site sketch (Ex. PM) was prepared; photographs were taken by the photographer Shashi (PW 11); and the dead body was sent for post-mortem. Thereafter, the investigation was taken over by Inspector Jag Pravesh (PW-10), who recorded the statements of witnesses, visited the spot, got prepared the scaled site plan (Ex. PD) and also arrested the appellant. SI Ishwar Chander (PW- 12) also partly investigated this case. He arrested and released the brothers of appellant, who were on anticipatory bail. Thereafter, the appellant was charge-sheeted for the offence punishable under Section 302 IPC while her brothers were charge-sheeted for the offence punishable under Section 302 read with Section 120-B IPC.

Prosecution evidence

3. After committal, the case was tried as Sessions Case No. 63 of 1997 in the Court of Additional Sessions Judge, Ambala. The prosecution, *inter alia*, examined 12 witnesses. Having regard to the subject matter of this appeal and the questions involved, it would be advantageous to take note of the relevant aspects emerging from the statements of material witnesses in requisite details, even at the cost of a little inflation.

3.1. PW-1 Dr. Usha Bansal, who had been one of the members of the medical board that had conducted post-mortem of the body of deceased and had prepared the report Ex. PA, stated the observations and opinion as follows:

> "*... A well defined depressed ligature mark measuring 3 cm. wide seen encircling the neck around the thyroid cartilage with a knot present on left side of neck. This ligature mark was ante-mortem in nature. A ligature mark above the thyroid cartilage going obliquely upward and posteriorly on left side present with an irregular impression of knot on left side of the neck measuring 1.5 cm wide present. This ligature mark was of post-mortem nature....*
>
> xxx xxx xxx

In our opinion, the cause of death was asphyxia due to strangulation...The probable time that elapsed between injury and death was few minutes and between death and post-mortem was 24 hours to 72 hours....."

3.2. PW-7 Brij Bhushan Kaul (brother of the deceased) has been the prime witness of prosecution in this case. The relevant assertions occurring in his examination-in-chief read as under: -

"..Upto Dec., 1997 I remained at Ambala Cantt. Tirloki Nath used to visit Ambala Cantt and was always found by us to be disturbed, because of the family problem. Tirloki Nath told us that he was shifted to a separate room at the top floor of the house and that he was not provided any article of food and was being mal-treated by his wife Smt. Gargi Devi. He also told many a time that he was never allowed to enter the room and toilet by his wife at night times. Tirloki Nath deceased left our house at Ambala Cantt lastly on 28.4.1997, around 7.45 AM and while leaving, told that it was his last time to go to Panchkula to collect his belongings and then would be coming to Ambala Cantt for ever. On this, I asked him as to why he was taking this step. He told me that he was very much upset due to the illicit relations of his wife Smt. Gargi Devi and was afraid of that if he stayed in the same house at Panchkula, he could be murdered, with the help of her three brothers?On this I told him that it was not possible because a wife cannot kill her husband. However, while leaving our house, he was totally shattered. Tirloki Nath used to take tea only in his room at the top floor of the house, using his independent cylinder in his room. He was not provided even tea by Smt. Gargi and the children. He told me that once his wife had opened the gas cylinder in order to kill him?..I was on tour on 1.5.97. I came back to my house at Ambala late in the night at about 11.30 PM. Immediately thereafter, I got a message from my neighbour, namely Mr. T.R. Malhotra giving me the message that his (sic) brother Tirloki Nath at Panchkula was no more, as he received this information from some colleague of my brother. (Objected to). My brother was murdered. At that time, it was not clear by whom. Thereafter, I gave telephonic messages to my relatives regarding the murder of my brother. So, I alongwith my brother-in-law Mr. A.C. Puri, my sister Smt. Radha Puri, my mother Smt. Raj Kumari, my wife Meenakshi went to Panchkula. On our reaching at Panchkula, we found two ASIs sitting outside the house of Smt. Gargi. On my enquiry, as to what had happened to my brother, I was told that I should go up-stairs and found out myself. We all went up-

stairs and found the dead body of Tirloki Nath hanging with a fan. The feet of my brother were touching the floor. Blood was noticed on the floor. The body was giving bad odour. I reported the matter to the police vide statement Ex. PH. It was signed by me....."

3.2.1. This witness PW-7, in his cross-examination on behalf of the appellant, stated, *inter alia*, as under: -

"It is correct that I was 1 1/2 years old when my father died. Tirloki Nath was the eldest son of the second marriage of my mother.?..There are two brothers and two sisters from the second marriage of my mother. My father died as told, due to cancer at Delhi, in the year 1961. It is incorrect to suggest that Tirloki Nath deceased had brought up all the children of my mother from both the marriages. ?.He bore expenses for some time regarding my education etc. The marriage of my brother Tirloki Nath was performed about 19 -20 years ago..My mother is having no source of income except the family pension due to my father's death and some rental income. My mother had given on rent a house situated in Adarsh Nagar, Ambala Cantt. I joined Navy in the year 1978. I was married in the year 1984. It is incorrect to suggest that all the expenses of my joining the service and on my marriage were borne by my brother Tirloki Nath. Since I was attached to my mother very well, I left my Navy job. Tirloki Nath after his marriage with Smt. Gargi probably in the year 1978, left my mother alone and started living separately and so this was the main reason that I left my Navy job in the year 1980. It is wrong to suggest that I was involved in some case in the Navy and the police was after me and I absconded and left my job. After leaving Navy, I joined Forbes Forbes, Camp Bell & Co. Ltd. at Jammu in the year 1981 or 1982 as Sales Executive?? I never took my mother to Jammu because I started my business at Karnal and opened a kiryana shop. It is wrong to suggest that I committed a fraud at Jammu and my services were terminated and thereafter I started a kiryana shop at Karnal. It is correct that the house in Adarsh Nagar, Ambala Cantt was sold and the proceeds of that house were utilised by me in opening a kiryana shop at Karnal. My mother started living with me at Karnal. It may be that the house was sold in the year 1980 and the sale proceeds were utilised by opening a kiryana shop, which was closed by me, because I did not like that business. After winding up my kiryana shop, I came to Ambala Cantt and settled with my mother. It is wrong to suggest that I misutilised the amount and so was having no option except to close the business and come back to Ambala Cantt.??I have been

serving as Manager in hotels, namely Hide Out Tourist Complex, Palwal and Standard Hotel, Ambala Cantt. I was working with Camlin Ltd. Bombay but was posted at Ludhiana as Sales Promotion Organizer (North) for a period of about 3 1/2 years. It is wrong to suggest that I committed a fraud at Ludhiana and my services were terminated accordingly. It is incorrect to suggest that I have been getting different Jobs with the efforts of Tirloki Nath deceased alone. I joined Veeto Hobbies Ambala for some time as Manager Marketing. It is wrong to suggest that I also committed a fraud and so my services were terminated.?.I started my factory at Ambala Cantt. That factory was closed after two years.?..It is correct that I obtained bank loan for running my factory but not due to the efforts of Tirloki Nath. There was no surety. It is incorrect to suggest that I pressurized Smt. Gargi to stand as a guarantee against bank loan, and on the refusal of Smt. Gargi, my brother Tirloki Nath stood as a guarantee. I have made payment of loan more than half the amount taken by me..

..It is incorrect to suggest that one Mr. Narang had filed civil suit against me and the company and which case was won by me. It is incorrect to suggest that Mr. Tirloki Nath had made payment to Mr. Narang and got the matter settled. Tirloki Nath might have come ten days, fifteen days prior to 28.4.1997, as he was constructing a house at Ambala Cantt. He used to complain against the behaviour of his wife. It is incorrect to suggest that the house was not being got constructed at Ambala Cantt by Tirloki Nath for himself but was being constructed for the residence of the mother ."

3.2.2. In his further cross-examination on behalf of the appellant, this witness stated as under: -

".....There was only one ancestral house at Model Town, Ambala City (Adarsh Nagar). There is no other immoveable (ancestral) property.....I do not know for how many days Tirloki Nath used to remain on tour in a month. It is correct that he was going on tour oftenly..? On 28.4.97, I went on tour after meeting my brother?I did not give any telephonic call to him in the night time of 28.4.97 or even in the day time as to why he had not reached Ambala Cantt with his luggage, as told by him?.I never enquired either on 29.4.97 or thereafter from Tirloki Nath for his not coming to Ambala Cantt with luggage??We talked to the Police officials for about 15 minutes in order to know the facts of the case. Thereafter we went up-stairs, and started weeping and crying. 2/3 ladies two brothers of Smt. Gargi, one uncle of Smt. Gargi, and aged

person were present at the time, when we reached. The children of Gargi were also present there at the first floor. No person was sitting with the dead body of Tirloki Nath at the time we had gone there-(volunteered). In the morning time about 25 persons from the neighbourhood had also come there, after my statement was recorded by the ASI.?..I do not know whether the tenants on the ground floor came in the year 1990 and litigation with them started in the year 1991?.I do not know whether the house at Panchkula was constructed with the joint income of Tirloki Nath and Smt. Gargi?.It is incorrect to suggest that I was after Tirloki Nath to get money even after pledging the house. It is incorrect that there was any pledging of the house in question and there was any opposition from Smt. Gargi in this regard.It is incorrect to suggest that in order to grab the house, I have falsely named the accused in this case...". There had been further cross-examination of this witness PW-7 on behalf of the other accused persons where he was, *inter alia*, confronted with his police statements which did not carry some of the assertions made in the Court. However, all the major aspects of his testimony having occurred in the extraction hereinabove, the other parts of his testimony in further cross-examination are not being extracted.

3.3. PW-8 Radha Puri (sister of the deceased) purportedly corroborated the testimony of PW-7. The relevant parts of her assertions in the examination-in-chief could also be usefully extracted as under:-

"..Tirloki Nath had come to Yamuna Nagar on 25.1.1997 and met us. He was very much disturbed and upset at the time. He told me that there used to remain tense situation at every time in the house because Smt. Gargi wanted that the house at Panchkula should be got mutated in the name of Smt. Gargi. He further was told that he was afraid of Smt. Gargi and her brothers and he apprehended danger to his life?.He stated that he was residing in a room at the top floor of the house and was getting meals from the Hotel. Tirloki Nath had stated that 2/3 times, he was attacked by Smt. Gargi and the children and that he had saved himself some-how or other. Tirloki Nath stated that Smt. Gargi was having illicit relations and she never told where she used to go. He stated that on an enquiry from Smt. Gargi, she always replied that he was having no concern to ask such questions. According to Tirloki Nath, he was not allowed even to use bath-room facility. He was using bath-room of the tenants on the ground- floor. However, we pacified him. We

were never allowed to visit our brother Tirloki Nath at Panchkula by Smt. Gargi.

On 1.5.97, I came to know through my brother Brij Bhushan that Tirloki Nath had committed suicide. He told that as per the information, the neighbourers at Panchkula told that Tirloki Nath had committed suicide. So, I alongwith others reached Panchkula, and saw Smt. Gargi, her brothers and sisters enjoying tea at the second floor of the house. I thought that my brother had gone to Hospital and was saved and that was the reason that they were enjoying the tea. Thereafter, the police came and we went up-stairs, where the dead body of Tirloki Nath was found hanging with a ceiling fan.?. I suspect that Smt. Gargi alongwith her brothers had murdered my brother Tirloki Nath."

3.3.1. In her cross-examination on behalf of the appellant, this witness PW-8 Radha Puri stated, *inter alia*, as under: -

"*On 1.5.97, at night time about 11 PM, I was sleeping and my husband awoke me and told after hearing the telephone that Tirloki Nath was no more in the world and started weeping?.. I myself, my husband, my brother Brij Bhushan, and his wife and my mother then went to Panchkula during night time?..Some police officials were sitting at the entrance of the gate of the house. .Firstly we went to first floor, where we saw Gargi, her brothers, children and relatives to whom I do not know. There was no person from the mohalla, where the policemen were sitting. ..I do not know whether house No. 1297, Sector 15, Panchkula was built out of the joint income of Smt. Gargi and her husband Tirloki Nath. I do not know whether Gargi had taken any amount by way of advance from the Govt. or not.*

.....I do not know whether Smt. Gargi and her husband were having cordial relations or not in the year 1994, when I visited her because I stayed there for a night and did not talk much, as the friend of Smt. Gargi and her children alongwith her husband had come there. I do not remember the names or antecedents of those persons. On 25.1.1997 when my brother Tirloki Nath had come to Yamuna Nagar, I found him very much disturbed and he talked to me regarding the behaviour of Smt. Gargi. I was alone. I narrated the facts to my husband in between the period from 25.1.97 to 1.5.97. I did not tell the aforesaid facts to any one else. It is incorrect to suggest that Brij Bhushan my brother was helped in his education, service and in his up-bringing by Tirloki Nath deceased. It is correct

that the ancestral house was sold by my brother Brij Bhushan. However, it is wrong to suggest that he misappropriated the sale proceeds of the house. I do not know when the house was sold. I do not know whether Tirloki Nath was having any plot in Ambala Cantt or not. Again said, the plot at Ambala Cantt is in the name of my mother. Again said, I cannot say exactly in whose name it is?It is correct that I did not make any verification from any quarter regarding illicit relations of Smt. Gargi, as told by my brother Tirloki Nath. I believed my brother what Tirloki Nath stated to me regarding the ill-treatment meted to him from Smt. Gargi. This was also told by my mother. My brother had told all about this to all the family members (sic).?.I enquired from Vaishali daughter of Tirloki Nath as to how Tirloki Nath had died. She did not tell even a word, though I was crying throughout. Vaishali told me as to why we had come there because we were not called there....." There had been further cross-examination of this witness also on behalf of the other accused persons where she was, *inter alia*, confronted with her police statements which did not carry several of the assertions made in the Court. However, all the major aspects of her testimony having occurred in the extraction hereinabove, the other parts of her testimony in further cross-examination are not being extracted.

3.4. ASI Amar Singh led in evidence as PW-9. He had arrived at the spot after having received the information about the death of Tirloki Nath. As regards the mode and time of receiving information, this witness stated that "*a telephonic message was received that one person in House No. 1297, Sector 15, Panchkula had committed suicide. This information was received at 11.15 PM.*" In his cross-examination, PW-9 stated, *inter alia*, as follows:-

"*Smt. Gargi and her children were on the first floor of the house, whereas the dead body was on the top floor of the house. I did not record the statement of Smt. Gargi and her children. I have been making formal investigation before the arrival of complainant etc. I have not kept any record qua the formal investigation. The neighbourers did not come to the spot, though they were found by me standing in the street. I did not call any one. I have been giving information to the officers on telephone...I did not join any independent witness from the locality*" (underlining supplied)

3.5. Inspector Jag Parvesh, who carried out major part of investigation, was examined as PW-10 and stated in his examination

in- chief that he reached the hospital on 02.05.1997 where he was handed over the statement EX.PH as made by PW-7; the inquest report Ex.PH/2 prepared by PW-9; and the post-mortem report EX.PA. He drew up the necessary proceedings; recorded statements under Section 161 of the Code of Criminal Procedure Code ('CrPC'); collected blood from the spot; and arrested the appellant. In his cross-examination, this Investigating Officer stated, *inter alia*, as under: -

> "*.....I made verification from the locality regarding the character of Smt. Gargi but did not record any statement. I do not remember the names of those persons.*
>
> *I verified from 5/10 persons of mohalla. I did not mention this factum in the report u/s 173 Cr.PC. Report was prepared by the then SHO. I interrogated Gargi accused while in custody. She had told that she was innocent and had not committed any offence?Gargi accused had told me that she was not having any dispute with her husband and was having cordial relations. I joined the children of Gargi accused in my investigation. I have not recorded their statements and as such, no record is there. The interrogation of Gargi was recorded in the zimini. I did not take finger prints from the rope. I had not at all taken finger prints from any other place where the dead body of Tirloki Nath was found. However, Finger Print Expert visited the place. None has told me that Brij Bhushan complainant used to harass Gargi and Tirloki Nath to extract money from them. It is correct that the stairs in the house are outside the door. If the door is closed, none can notice who is coming down and who is coming up. I investigated regarding the visitors in the house during the 3/4 days prior to the 2.5.97 and I had come across one Pandit who visited that house during this period. Smt. Gargi told that one Pandit was brought for performing Havan. I made verbal enquiries from the neighbourhood…….*
>
> *……I had recorded statements of other witnesses i.e. mother, sister and brother-in-law of deceased in the hospital….. There is a direct stair case from the ground floor to the top floor of the house of Gargi and one can go upstairs and come down stairs without entering any room on the first floor*.." (underlining supplied)

3.6. PW-2 H.S. Narula, the Deputy Manager, Oriental Insurance Company, Sector 22, Chandigarh was examined by the prosecution to testify that the deceased was working in his Company as Assistant Administrative Officer, who lastly attended the Office on 28.04.1997. In his cross-examination, this witness admitted the fact

that deceased Tirloki Nath used to remain on tour for about two weeks in a month.

3.7. PW-3 Manohar Lal, who was working as a constable in S.P. Office, Ambala drew up the site plan Ex. PD of the place where the body of deceased was found. In his evidence, PW-3 pointed that there was a bathroom-cum-toilet, attached with the room on the second floor. The site plan of second floor (Ex. PD) shows about 10 feet x 3 feet space marked as bath/toilet.

3.8. PW-4 Sant Lal Gupta, the then Assistant Audit Officer, AG Audit, Punjab, Chandigarh testified to fact that the appellant was working as Senior Auditor in his office; that she was on casual leave on 28.04.1997 and 29.04.1997; and that she attended the office on 30.04.1997 and 01.05.1997. In his cross-examination, this witness expressed want of knowledge if the appellant often used to come to the office with her husband and used to leave after office hours with her husband. This witness also stated that '*no complaint was received from the side of husband of Smt. Gargi or any other relation of husband of Smt. Gargi against Smt. Gargi*'.

3.9. The other witnesses examined by the prosecution had been PW- 5 Head Constable Ramesh Kumar; PW-6 UGC Baldev Singh; PW-11 Shashi, who took the photographs at the site; and PW-12 SI Ishwar Chander, who also partly investigated the case.

4. On behalf of the appellant, several features of the prosecution evidence have been highlighted with the contentions that there had been stark inconsistencies, contradictions, improvements and twists in the testimonies of PW-7 and PW-8; and that there had been several failings in the investigation. We shall refer to these features and contentions hereafter a little later.

Defence Version and Evidence

5. The appellant in her statement under Section 313 CrPC stated, *inter alia*, that her husband had informed about his going on a tour on 29.04.1997; and that she had taken casual leave on 28.04.1997 and 29.04.1997 on account of her ill-health. She also stated that she and her husband were having cordial relationship and would share the bed with their son. She also stated that the case against her was a motivated one and that she was not guilty of committing the murder of her husband. Some of the answers given by the appellant in her statement under Section 313 CrPC may be usefully extracted as under:-

"Q:5 It is further in evidence against you that Tirloki Nath used to reside at the top floor as you have not allowed him to reside with you and your children. He was using independent cylinder in his room to prepare tea and he had further told that once you had opened the gas cylinder in order to kill him. What have you to say?

Ans: It is incorrect. He was residing with the family on the first floor. I and my husband have one common bed room and my son Vaibhav was also sleeping with us in the same bed room.

The top floor was never used for residence purposes. The same was being used as a store & for some time a family friend used to stay there.

Q:6 It is further in evidence against you that on the night of 1.5.1997 at about 11.30 p.m. Brij Bhushan PW received a message that his brother Tirloki Nath at Panchkula was no more and that he was murdered. He gave a telephonic message to his relatives and he alongwith his brother in law A.C. Puri, Sister Smt. Radha Puri, mother Raj Kumari and his wife Meenakshi went to Panchkula and found two ASI were sitting outside the said house. What have you to say?

Ans: It is incorrect. I advised Mr. Bhutt a colleague of deceased Tirloki Nath to telephonically inform all the relations and friends and Mr. Bhutt gave the information of death to Mr. Brij Bhushan.

*** *** ***

Q:8 It is further in evidence against you that the police of P.S. Sector-19 Panchkula received an information regarding that the dead body of Tirloki Nath was hanging with the ceiling fan in House No. 1297/15, Panchkula. ASI Amar Singh alongwith other police officials reached the spot and informed the relatives of the deceased. He also summoned the photographer, who took snaps of the spot. Negatives are Ex. P6 to Ex. P8 and positives are Ex. P9 to Ex.P11.

Ans: It is incorrect. In fact, the police did not reach the spot but was brought by Mr. Bhutt.

*** *** ***

Q:12 It is further in evidence against you that Tirloki Nath deceased attended his office on 28.4.1997. Thereafter he did not come to the office and you remained on casual leave on 28.4.1997 and 29.4.1997 and attended the office on 30.4.1997 and 1.5.1997. Letter to this effect is Ex.PE. What have you to say?

Ans: It is incorrect. However, on 29.4.97 morning my husband informed me that he was to go on tour and would be back on

3.5.97, in the evening & he would go to Ambala also before coming to Chandigarh/Panchkula. I was sick on 28th & 29th April, 97.

*** *** ***

Q:15 Why this case has been made against you and why the witnesses are deposing against you?

Ans:- This is a false case and PWs have deposited (sic) falsely. The case has been made up at the instance of Brij Bhushan who wanted to grab the property of my husband.

Q: Do you want to say anything else?

Ans:- I am innocent. I have been falsely implicated in the case by Brij Bhushan & his sister who wanted money from me at the time when I was taken by the police in the morning of 2.5.97."

5.1. Four witnesses were examined in defence. One of the relevant witness had been DW-3 Surinder Kumar Bhat, said to be a family friend and colleague of the deceased. The relevant assertions of this witness in the examination-in-chief read as under: -

"I knew Tirloki Nath deceased for the last about 18 years. I belong to J&K State. Tirloki Nath was also of that place. So, I knew him well. He was working in our office but at the time of death, he was in Sector 22 branch of our Insurance Co. in Sector 22, Internal Audit cell of our Insurance Co. is located where deceased was working at the time of death. The house of Tirloki Nath is at a distance of 1 1/2 furlongs from my house in sector 15, Panchkula. I was having friendly as well as homely relations with Tirloki Nath deceased. I know Smt. Gargi accused present in the court. She is the wife of Tirloki Nath deceased. Whenever I visited the house of Tirloki Nath, I always found cordial relations between Tirloki Nath and Smt. Gargi Devi. Tirloki Nath never complained as a friend to me against Smt. Gargi. So far as I can say, Smt. Gargi is enjoying a good reputation in the Mohalla. I know Brij Bhushan, the younger brother of Tirloki Nath deceased. Tirloki Nath used to remain disturbed because his younger brother always demanded money from him. I know that Tirloki Nath deceased had helped Brij Bhushan in getting some employment for Brij Bhushan in J&K State about 9 years back with great efforts. We have formed a society known as General Insurance Employees Cooperative Thrift and Earner Society. I am the Vice President of the said society. Tirloki Nath in mid April, 1997 met me alongwith his brother Brij Bhushan and wanted some loan from our society. But I could not help due to certain obligations, which could not be met with. I came to

know at 6.30 - 7 PM on 1.5.97 that Tirloki Nath had committed suicide. I went to the house of Tirloki Nath. There were many persons collected then. I went to Police Station, Industrial Area, Panchkula to report the matter at 9.30 PM on 1.5.97. Smt. Gargi after my meeting with her, gave me telephone numbers for giving information to the relations of Tirloki Nath deceased at Ambala. At about 11 PM, the information was conveyed to Brij Bhushan who reached Panchkula at 4 AM on 2.5.97. Two-three police officials came alongwith me at the residence of Tirloki Nath deceased.. I remained throughout the night of 1.5.96 (sic) and left for my house at 6.30 AM on 2.5.97. No photographer came there in my presence. I did not notice any gas cylinder in the room where the dead body of Tirloki Nath was found. The house of Tirloki Nath is two storeyed building having ground floor in addition. Some tenant was residing at the ground floor at the time Tirloki Nath had died. That tenant has not vacated the house, though not residing now. There are outer stairs upto second storey and one can go upstairs without entering into the ground floor and first floor. There is gate of grills in between ground floor and first floor. It is correct that the lock of the gate can be opened from both the sides viz. from inside as well as from out side.."

5.1.1. This witness was thoroughly cross-examined by the prosecution where he stated, *inter alia*, as under:-

"*I treat Gargi accused as my Bhabi being wife of my deceased friend- Tirloki Nath. We have kept complete record of our credit society. Tirloki Nath did not give any application in writing for raising loan from our society.. It is incorrect to suggest that deceased alongwith Brij Bhushan never came to me for any demand of loan a month prior to the occurrence and I am deposing falsely just to support accused..I have not kept any slip where I noted down the telephone numbers of Ambala for information the relations of Tirloki Nath deceased.....It is correct that if the gate in between first floor and ground floor is locked from both sides, no one can go up-stairs. At the time I reached the house of Tirloki Nath, the gate was open and people were coming and going from there. No one told that the lock or bolt of the grill gate of upstairs was broken by some one. It is also correct that Tirloki Nath with my assistance succeeded in getting employment for his brother Brij Bhushan in J&K State about nine years back. This he did being a brother. I did not help Brij Bhushan thereafter. ..It is incorrect to suggest that Tirloki Nath deceased was residing all alone in the upper room of the house and was not residing with his family members. In fact, he was residing*

with his family members on the first floor. It is incorrect to suggest that Smt. Gargi was harassing her husband unnecessarily with the help of her brothers on one pretext or the other"

5.2. DW-4 Akhilesh Bhatnagar, Assistant, Oriental Insurance Company, Chandigarh was examined in relation to the tour programme of the deceased Tirloki Nath from 06.01.1997 to 31.01.1997 and the hotel expenses bills paid by the Company, which show that the deceased was at Karnal from 14.01.1997 to 01.02.1997. The testimony of other witnesses DW-1 and DW-2 is not relevant for the purpose of this appeal as they were examined in relation to the plea raised by the co-accused persons as regards their employment.

The Trial Court found all the accused persons guilty

6. The Sessions Court, in its judgment and order dated 09.06.1998, accepted the prosecution case; and while rejecting the contentions urged on behalf of the accused, held that the chain of circumstances was established by the prosecution, bringing home the guilt of the accused persons. The Trial Court, accordingly, convicted them for the aforementioned offences of criminal conspiracy and murder and awarded sentence of rigorous life imprisonment together with fine of Rs. 2,000/- each with default stipulations.

6.1. The Trial Court concluded that the deceased was done to death by way of strangulation, essentially on the basis of medical evidence and with reference to the position of the hanging dead body and other features at the spot, like the one that door of the room in question was not bolted from inside. The finding that the appellant had committed the offence with her brothers in the intervening night of 28/29.04.1997 got its basis, *inter alia*, in the statement allegedly made by the deceased to PW-7 prior to his departure from Ambala Cantt. where he expressed fear of his life, as also in the facts that the appellant had taken leave from her office for 28.04.1997 and 29.04.1997 and that the appellant and her brothers were not grieving when the body of the deceased was found.

The High Court affirmed the conviction of appellant while acquitting her brothers

7. The appeals preferred by the appellant and her brothers against the judgement and order aforesaid, being Criminal Appeal No. 341-DB of 1998 and Criminal Appeal No. 359-DB of 1998, before the High Court of Punjab and Haryana at Chandigarh were

considered together and decided by the common judgment dated 05.03.2008. The High Court held that it had been a case of homicide, essentially with reference to the medical evidence and the features of the scene of crime. The High Court also held that the culpability of the appellant stood established in view of the circumstances that: (a) when the appellant was sharing the same bedroom with deceased Tirloki Nath, the onus was heavy upon her to explain the circumstances leading to the death of her husband, which she failed to discharge; (b) the appellant had the motive to murder her husband when there were strained relations between them and the deceased had expressed apprehension to be done to death by the appellant; (c) the subsequent conduct of the appellant was also questionable, where she was found taking tea with her brothers on the first floor although the dead body of Tirloki Nath was hanging by rope in the *Chaubara* at the top floor; (d) and the appellant did not send any information to the brothers and other relations of Tirloki Nath immediately after noticing his demise. The High Court, however, rejected the prosecution case that brothers of the appellant had conspired with the appellant to carry out the murder and hanging of the deceased Tirloki Nath. Even after rejecting the prosecution case against brothers of the appellant, and even after finding that the crime in question was not the handiwork of one person, the High Court proceeded to observe that the appellant was rightly convicted in the matter as the principal offender, though the investigating agency failed to find out the other persons who were accomplice in this crime. The High Court also observed that the Trial Court had discussed threadbare the defence evidence and had rightly disbelieved the testimony of DW-3 Surinder Kumar, who was introduced by the appellant as an afterthought.

7.1. With the aforesaid findings and observations, the High Court upheld the conviction of the appellant but acquitted her brothers on the ground that there was no evidence on record to prove the existence of any conspiracy to murder the deceased. The High Court, *inter alia*, observed and held as follows:

> "*21. ..Tirloki Nath was sharing the same bed room, in which Gargi Devi used to sleep, as stated by her in her statement under section 313 Cr. P.C. The dead body of Tirloki Nath was found hanging in the same house, in the chaubara. Thus, heavy onus lay on Smt. Gargi to explain the circumstance, leading to his death. She only stated, in her statement under section 313 Cr. P.C. that she was falsely implicated, in the instant case, and that the entire*

investigation, was at the instance of Brij Bhushan, PW.7. She, therefore, did not furnish any explanation, with regard to the circumstances, leading to the death of Tirloki Nath. This clearly proved her culpability.

*** *** ***

23. There were strained relations, between Tirloki Nath and his wife. From the statement of Brij Bhushan, PW-7 and Radha Puri, PW-8 it was proved that Tirloki Nath was tense and upset, as he was being ill treated by his wife. It is has also come in the statement of Radha Puri, PW-8, that Tirloki Nath was fearful that he would be killed one day. When Tirloki Nath met Radha Puri, his sister, and his brother-in-law, in Ambala he told them that he was apprehending danger to his life at the hands of Smt. Gargi his wife. Even, it is evident, from the statement of Brij Bhushan, PW7, that Tirloki Nath was being ill-treated by his wife Smt. Gargi. Even on 28.4.1997 in the morning when Tirloki Nath left the house of Brij Bhushan, at Ambala, for Chandigarh, he told him that it was his last visit to Panchkula, as he would be coming with his luggage, to permanently settle at Ambala, as he was fearing that he would be done to death by his wife Smt. Gargi. These last words spoken by him to his brother, Brij Bhushan on 28.4.1997 in the morning, as stated above, fall within the purview of his dying declaration. It was on account of the strained relations, between Triloki Nath has his wife Smt. Gargi that she committed her murder by strangulating him and thereafter hanged his body with ceiling fan (sic). Smt. Gargi was definitely having a motive to commit the murder of Triloki Nath, for the reasons referred to hereinbefore. The motive plays a very significant role, in case, which is based on the circumstantial evidence. The culpability of Smt. Gargi, accused is thus proved.

*** *** ***

29. No doubt, it may be said that the commission of crime, in this case could not be the handwork of one person only. Smt Gargi might have taken the help of some other persons, in hanging the body of Tirloki Nath, deceased after strangulating him, but it was not proved as to who those persons were. As stated above, it was also not proved that accused Shuhabs Tiwari, Ramesh Tiwari and Rajneesh Tiwari hatched conspiracy with Smt. Gargi and in pursuance thereof committed the murder of Tirloki Nath. Who were those persons, was for the Investigating Agency to find out. Even if, the Investigating Agency, failed to find out those persons, Smt. Gargi could not

absolve herself of the liability. Smt. Gargi being the principal offender was rightly convicted and sentenced for the commission of offence punishable under section 302 IPC" (underlining supplied)

Rival Contentions

8. Assailing the judgment and order aforesaid, learned counsel for the appellant has strenuously argued that the appellant has been falsely implicated in this case by her in-laws, whose main aim was to grab the property of the deceased, while the actual culprits have escaped the prosecution. The learned counsel has elaborated on the submissions that the relations between the deceased Tirloki Nath and his brother, PW-7 Brij Bhushan (the complainant) were strained because of property dispute for, at one point in time, their mother had bequeathed all the properties in favour of the deceased, which was not appreciated by the complainant and the deceased got the property at Ambala Cantt. registered in his name just a month prior to his untimely demise. The learned counsel has referred to the statement made by the appellant under Section 313 CrPC to submit that the appellant and deceased were married for about 18-19 years; their relations were cordial; and they were leading a happy married life. The learned counsel has particularly referred to the statement made by the appellant that she and her deceased husband were sharing the bedroom with their son and that the room on the top floor of the house was not used for any other purpose except as a store.

8.1. The learned counsel has also argued that if the complainant (PW-7) was aware on 28.04.1997 that the deceased apprehended some form of danger to his life and the deceased had stated that he would be returning with his baggage, it remains inexplicable that this witness did not make any effort to find the whereabouts of the deceased for a period of three days and until he got the news of demise. The learned counsel has also attempted to submit that the complainant had several vices; that several criminal cases were pending against him; and his family members had published a newspaper advertisement that anyone dealing with him shall be doing so at his own risk.

8.2. The learned counsel would submit that the case at hand hinges around circumstantial evidence but there is no connecting link to associate the appellant to the murder of her husband; and the prosecution has failed to prove the motive of the appellant. The learned counsel for the appellant has also argued that there were

lapses on part of the police while collecting evidence where the FIR was registered only after the arrival of complainant and his family members and the statements of the persons who had gathered at the scene were not recorded at all.

8.3. The learned counsel has also assailed the findings that it had been a matter of strangulation and hence of a homicidal death with the submissions that as per medical jurisprudence, in case of strangulation, some scratches, abrasions, bruises etc. would be found on the dead body and hyoid bone would be found broken but, in the present case, there were no such marks nor hyoid bone was broken.

8.4. The learned counsel has further contended that strangulation of the deceased and then, hanging of his dead body from the ceiling fan could not have been carried out by one person alone and it remains entirely improbable that such tasks were carried out by a frail lady like the appellant. Thus, according to the learned counsel, with the acquittal of brothers of the appellants, the alleged chain of circumstances is broken on the material point and the appellant deserves to be acquitted on this count alone.

8.5. The learned counsel for the appellant has referred to several decisions of this Court, including those in ***Rajkumar v. State of M.P.: (2004) 12 SCC 77; Sonvir alias Somvir v. The State (NCT of Delhi): (2018) 8 SCC 24; Ramesh and Ors v. State of Rajasthan: (2011) 3 SCC 685; SK. Yusuf v. State of West Bengal: (2011) 11 SCC 754;*** and ***Sawal Das v. State of Bihar: (1974) 4 SCC 193***.

9. *Per contra*, learned counsel for the respondent has duly opposed the submissions made on behalf of the appellant with reference to the evidence on record and the finding recorded by the Trial Court and the High Court.

9.1. So far as the question as to whether it had been a case of homicide or the deceased had committed suicide, learned counsel has argued that in case of suicide, the dead body would be in a suspended position, feet would not reach the floor and knees would also not bend, as found in the present case. The learned counsel has supported the finding of the Trial Court that in almost all cases of suicide, the door would be closed from inside rather than being left open, as had been the scenario of the present case. Learned counsel has also highlighted that it was not a mere coincidence that the appellant remained on casual leave during the very period when the deceased was done to death; and when the deceased was admittedly

seen last in the company of the appellant on 29.04.1997 and when his corpse was found hanging in their own house on 01.05.1997, burden was heavy upon her to explain if the deceased had gone anywhere else, but she has altogether failed to discharge such a crucial burden. In the totality of circumstances, according to the learned counsel, the conclusion remains inevitable that the appellant, with her accomplice, had strangulated the deceased and hanged him by a rope to cover-up the scene as that of suicide.

9.2. In relation to the argument that the complainant had not attempted to contact the deceased for the three days after he had left Ambala Cantt., despite being aware that the deceased apprehended danger to his life, learned counsel for the respondent has argued that the incident took place in the year 1997 when mobile phones and connectivity was not available to all and there was no telephone connection on the top floor of the house. Thus, according to the learned counsel, in the given circumstances, mere want of efforts on the part of PW-7 to contact his brother would not falsify the prosecution case.

9.3. The learned counsel for the respondent has vehemently contended that the factors like some minor and irrelevant variations in the statement of prosecution witnesses or want of some additional evidence are of no effect because the material aspects stand established on record; and all the proved circumstances form a complete chain, ruling out any other hypothesis except guilt of the appellant and hence, she has rightly been convicted.

Preliminary Observations

10. Having given anxious consideration to the rival submissions and having scanned through the entire record with reference to law applicable, we are impelled to say at the outset of discussion that in this matter, several fundamental shortcomings in the investigation and several loopholes in the prosecution propositions got overlooked by the Trial Court as also by the High Court. In an overall comprehension of the matter, we are clearly of the view that it would not be safe to accept the projected propositions of the prosecution and to convict the appellant for the offence of murder of her husband.

The circumstances relied upon and the point for determination

11. It is at once clear that in this case, no direct evidence is available in answer to the material questions as to how the deceased,

husband of the appellant, met with his untimely death; and if it were not a case of suicide, who had carried out the gruesome and ghastly act of killing him and hanging the dead body in his room? The Trial Court and the High Court have held that the major circumstances projected by the prosecution against the appellant have been established beyond doubt, though the High Court has not accepted the prosecution case that the brothers of appellant were conspirators and collaborators in the crime. It is contended on behalf of the appellant that it had been a case of suicide; that there was no motive on the part of the appellant to eliminate her husband with whom she was having cordial relations and was leading a happy married life; that the deceased and the appellant were lastly in each other's company on 29.04.1997 when the deceased informed her that he shall be going on tour and would be returning by 03.05.1997; and that the appellant's prosecution was fenagled by the brother of her husband, who was having an eye on the property. On the other hand, according to the prosecution, the crucial circumstances stand established that the homicidal death was covertly sought to be shown as a case of suicide; that the appellant had the motive and intent to kill her husband; that the deceased was lastly in the company of the appellant; and that the appellant failed to offer any explanation as to how her husband got killed and was hanged though the dead body was found in the same house where deceased was residing with her.

11.1. In other words, what is argued in this case for the prosecution is that the entire chain of causation has been established beyond all reasonable doubts. It is submitted that the evidence on record has clearly brought forth the following major factors against the appellant:-

a) that the death of the deceased was homicidal in nature and it had not been suicidal as was sought to be projected by the culprits by hanging the dead body from a rope;

b) that the deceased had strained relations with his wife, the appellant, for she was indulgent in illicit relations and was insistent on transfer of property in her name;

c) that the deceased was having, and had expressed, imminent danger to his life at the hands of his wife, the appellant;

d) that the deceased was last seen with the appellant and she had failed to explain as to how the deceased met with his end; and

e) that as per the post-mortem report, death had occurred 24 to 72 hours before post-mortem examination on 02.05.1997 and the appellant was at home during this period, as she was admittedly on leave on 28.04.1997 and 29.04.1997.

11.2. The question is as to whether the Trial Court and the High Court are right in holding that the aforementioned circumstances stand established beyond reasonable doubt and do form a complete chain, ruling out any other hypothesis except guilt of the appellant?

The principles governing circumstantial evidence

12. When the present case pivots around circumstantial evidence, having regard to the questions involved, apposite it would be to take note of a few fundamental principles governing the circumstantial evidence and its appreciation.

13. It remains trite that in judicial proceedings, proof is made by means of production of evidence, which may be either oral or documentary. As regards its nature, the evidence is either direct or circumstantial. The direct evidence proves the existence of a particular fact that emanates from a document or an object and/or what has been observed by the witness. The circumstantial evidence is the one *whereby other facts are proved from which the existence of fact in issue may either be logically inferred,* or at least rendered more probable. *A Text Book of Jurisprudence by G.W.Paton, Fourth Edition, Page 598.*

13.1. In umpteen number of decisions, this Court has explained the essentials before a particular fact could be held proved by way of the proof of other fact or facts; and has expounded on the principles as to how circumstantial evidence need to be approached in a criminal case. We need not multiply on the case law on the subject; only a brief reference to the relevant decisions would suffice.

13.2. In the case of ***Chandmal and Anr. v. State of Rajasthan: (1976) 1 SCC 621,*** this Court said:-

> *"14. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, 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. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt."

13.3. In the case of ***Sharad Birdhichand Sarda v. State of Maharashtra: (1984) 4 SCC 116,*** this Court laid down the golden principles of standard of proof required in a case sought to be established on circumstantial evidence with reference to several past decisions, including that in the case of ***Hanumanth v. State of Madhya Pradesh: AIR 1952 SC 343,*** in the following:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]*** *where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

13.4. In the decision cited by the learned counsel for the appellant in *Sonvir* (supra), this Court, after taking note of the other cited decisions, pointed out the principles as under:-

> "*82..Law of conviction based on circumstantial evidence is well settled. It is sufficient to refer to the judgment of this Court in* ***Ramesh v. State of Rajasthan (2011) 3 SCC 685*** *where in para 17 the following has been held: (SCC p. 693)*
>
> "*17. Before we proceed with the matter, it has to be borne in mind that this case depends upon circumstantial evidence and, as such, as per the settled law, every circumstance would have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and perfect that the only inference of the guilt of the accused should emanate therefrom. At the same time, there should be no possibility whatsoever of the defence version being true.*"

13.5. Thus, circumstantial evidence, in the context of a crime, essentially means such facts and surrounding factors which do point towards the complicity of the charged accused; and then, chain of circumstances means such unquestionable linking of the facts and the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis.

13.6. Incidental to the principles aforesaid, which are neither of any doubt nor of any dispute, profitable it would be to keep in view the caveat entered by G.W. Paton ibid., *page 598* as regards circumstantial evidence thus:

> "*On the other hand, circumstances may mislead or false clues may have been laid by the wrong doer to cast suspicion on another*". This has been stated with reference to 514 in Criminal Law by C.S.Kenny wherein, it is cautioned that: though 'circumstances cannot lie', they can mislead. They may even have been brought about for the very purpose of misleading, as when Joseph's silver cup was placed in Benjamin's sack, or when Lady Macbeth 'smeared the sleeping grooms with blood'.

<u>Several loopholes in investigation; withholding of relevant evidence by prosecution</u>

14. Having taken note of the point arising for determination and the basic principles to be kept in view while dealing with this case based on circumstantial evidence, when we examine the record,

several shortcomings and loopholes in the investigation and in prosecution evidence manifest themselves at once. Before analysing the evidence adduced on record, it appears rather necessary to take note of such features of shortcomings, which are apparent on the face of record and have a material bearing on the questions involved.

15. In the present case, the very approach of the investigating agency had been shrouded in so much of unexplained obscurities that a question perforce arises if there had been a fair and unbiased investigation of the crime in question?

15.1. The manner of dealing with this case by the investigating agency, right at the inception, has left a few serious questions unanswered i.e., as to when did the police receive information about dead body of the husband of the appellant, by what mode, and through whom? PW-9 in his testimony before the Court conveniently stated that such an information was received through "telephonic message" but did not state the particulars of such informant. No entry in the *roznamcha* or general diary has been produced to show that such an information was duly entered in the record before proceeding for investigation. Significantly, in the first note drawn up in the matter at 5.30 a.m. on 02.05.1997 (EX. PH/1), PW-9 only stated that 'the information was received at the police station'. The fact that it had been a telephonic information is conspicuously missing in Ex.PH/1. This aspect has got a material bearing in the matter because the defence witness DW-3 specifically testified to the fact that he was the first person informed by the appellant about the demise of Tirloki Nath; and that he went to the police station at about 9.30 p.m. on 01.05.1997 and divulged the information. He further asserted having accompanied the police to the site and having conveyed the information to PW-7.

15.2. It is also noteworthy that as per PW-7, he got the information from one T.R. Malhotra at about 11.30 p.m. who, in turn, had received the information on telephone from a colleague of the deceased. Neither any enquiry was made from the said T.R. Malhotra nor any other effort was made to find out the colleague of the deceased who had telephoned him.

15.3. In the face of such a gap in the prosecution evidence, there appears no reason to disbelieve the testimony of DW-3 Surinder Kumar Bhat as regards the time of information to police and himself being the informant. In such a scenario, it remains absolutely

inexplicable as to why the information given by DW-3 was not reduced in writing and the proceedings were not conducted on that basis. This question magnifies itself to tougher questions for the prosecution as to the time when PW-9 ASI Amar Singh reached the site and with whom. From the evidence on record and surrounding facts, it appears that the said ASI had reached the site at around 10.30 p.m. accompanied by DW-3 Surinder Kumar Bhat. The toughness of these questions further amplifies into the harder, and unanswered, question for the investigating agency as to why for a long period of about 4 to 5 hours at the site, the ASI (PW-9) did not carry out any investigation and did not record any statement.

15.4. It is not the case of prosecution that the ASI (PW-9) was prevented by any reason to immediately attend on his duties after reaching the site. It is also not the case that he attempted to make any enquiry from any person until arrival of the complainant and other family members of the deceased. Even if it be assumed that the other family members of the deceased were on the way and the ASI knew about this fact, nothing had prevented him from attending on his duties of investigation. Strangely enough, even the first *panchnama* was prepared only after reaching of the complainant. It is also not clear as to why the statements of the children of the deceased were not taken when his daughter, 16 years of age, was very much present at the site. It is also not explained as to why in this kind of matter, carrying suspicious overtones, PW-9 did not make any enquiry from any of the neighbours, who were available at the site; and from the tenant, who was residing at the ground floor of the same building and whose washroom was allegedly being used by the deceased (as per the assertion of PW-8)? It is difficult to say that the conduct of this Investigating Officer (PW-9) had been totally free from doubt.

15.5. Apart from the above-noted omissions at the very initial stage, we find absolutely no reason that the Investigating Officer PW-10, even after allegedly making enquiries in the locality regarding the character of the appellant from 5-10 persons, neither mentioned this fact in the investigation report nor recorded the statement of anyone of them. This Investigating Officer further stated to have joined the children of the appellant in the investigation but did not record their statements either. This Officer also did not bother to take the statement of the tenant, whose testimony would have been of immense significance, looking to the nature of accusations as also the factors related with the building in question.

15.6. Moreover, in this matter, where it was *prima facie* appearing that the clues available at the site might play a significant role in reaching to the real culprits, it is also intriguing to notice that the Investigating Officer did not take even elementary care to obtain fingerprints from the material objects and to get them analysed properly. The Investigating Officer (PW-10) has stated, rather with impunity, that he did not take any fingerprints at all, even while admitting that the fingerprint expert did visit the site. It is not stated that the so-called expert expressed inability to collect such prints for any reason. It is left only for one to wonder as to for what purpose did the so-called fingerprint expert visit the site, if no prints were to be taken at all!

15.7. The above-mentioned unexplained shortcomings, perforce, indicate that in this case, the investigation was carried out either with pre-conceived notions or with a particular result in view. It is difficult to accept that the investigation in this case had been fair and impartial. From another viewpoint, on the facts and in the circumstances of this case, the omissions on the part of investigating agency cannot be ignored as mere oversight. These omissions, perforce, give rise to adverse inferences against the prosecution.

16. In this case, it is also interesting to notice that though the prosecution had cited the other relations of the deceased as witnesses, including his mother and brother-in-law (husband of PW-8 - who had otherwise signed the inquest report) but did not examine them before the Court. Withholding of relevant witnesses could only lead to further adverse inference that if examined, they would not have supported the prosecution case. This is apart from the fact that the investigating agency avoided to include any independent witness in the investigation and did not carry out necessary enquires from the persons other than in-laws of the appellant.

17. Hereinabove, we have only indicated a few broad aspects of shortcomings and lacunae in the prosecution case which is otherwise resting on circumstantial evidence and on the theory propounded by the brother of deceased (PW-7), as supported by his sister (PW-8). The upshot of the discussion foregoing is that the propositions projected by the prosecution require deeper scrutiny to find if the case against the appellant is established beyond reasonable doubt; and if the elements of adverse inferences do not materially affect the prosecution case.

Homicide or suicide

18. As noticed, the first question that concerns us in this matter is as to whether death of Tirloki Nath was suicidal or it had been a matter of homicide. The Trial Court as also the High Court have returned concurrent findings that it had been a matter of homicidal death. Both the Courts came to this conclusion essentially with reference to the medical opinion that the cause of death was asphyxia due to strangulation; and also with reference to some of the surrounding factors that the feet of the hanging dead body were touching the floor; the knees were bent; the slippers were not removed; and the room in question was wide open. Assailing such findings, it is contended on behalf of the appellant that as per medical jurisprudence, scratches, abrasions, bruises etc. are usually present and hyoid bone would be usually found broken in case of strangulation but, in the present case, there were no such marks nor hyoid bone was broken.

18.1. We have closely examined the testimony of PW-1 Dr. Usha Bansal, who was one of members of the board that had conducted post-mortem. We have also taken into account the features noticeable from the site plan, the inquest report and the photographs placed on record. Having examined the relevant material, we find nothing of infirmity in the findings of the Trial Court and the High Court that it had been a case of strangulation, as could be seen from the post-mortem report that the dead body carried "*well defined depressed ligature mark measuring 3 cm. wide seen encircling the neck around thyroid cartilage with a knot present on left side of neck and this ligature mark was anti-mortem in nature*". The other ligature mark was on the left side of the neck measuring 1.5 cm wide and that was post-mortem in nature. The board had undoubtedly been of the opinion that the cause of death was "*asphyxia due to strangulation*". With such categorical medical opinion coupled with all the relevant features surrounding the suspended dead body in the room in question, it is difficult to say that it had been a case of suicide merely because hyoid bone was not broken or because the marks of resistance like abrasions/scratches were not reported. The presence of marks of resistance would depend on a variety of factors, including the method and manner of execution of the act of strangulation by the culprits; and mere want of such marks cannot be decisive of the matter. Equally, it is not laid down as an absolute rule in medical jurisprudence that in all cases of strangulation, hyoid bone would invariably be fractured. On the contrary, medical jurisprudence

suggests that only in a fraction of such cases, a fracture of hyoid bone is found.

Modi: A textbook of Medical Jurisprudence and Toxicology, 26th Edition page 529 where it is also noted:

"In the Journal of Forensic Sciences Volume 41 under the Title - Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

The hyoid is the U-shaped bone of the neck that is fractured in onethird of all homicides by strangulation. On this basis, post-mortem detection of hyoid facture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone....."

In other words, absence of fracture of hyoid bone would not lead to the conclusion that the deceased did not die of strangulation.

18.2. For what has been discussed in preceding paragraphs, we have no hesitation in affirming the findings in the impugned judgments that the deceased Tirloki Nath was done to death by strangulation and thereafter, his dead body was hanged from the ceiling fan in the room.

19. However, the question still remains as to whether the circumstances brought on record establish beyond reasonable doubt that such ghastly act of killing Tirloki Nath and hanging his dead body was carried out by the appellant so as to maintain her conviction under Section 302 IPC?

20. Before examining the circumstances brought on record by the prosecution, we may observe in the passing that the Trial Court as also the High Court have proceeded on the lines that once it was established that the deceased Tirloki Nath was killed by way of strangulation and the killer/s suspended his dead body from the fan so as to mislead; and since the dead body was found in the very house he was residing with the appellant who could not explain the reason of his death, she was to be held responsible for the crime. In other words, the Trial Court and the High Court have assumed that

as soon as the conclusion about the homicidal death of Tirloki Nath in his own room is reached, all other aspects of the prosecution story about so-called strained relations of the deceased and the appellant, and the alleged threat perception of the appellant *ipso facto* come into operation; and the finding on homicidal death itself has been taken as the answer to other question as to whether homicide was to be imputed on the appellant or not. In our view, while examining the question as to whether the death in question was homicidal or suicidal, there was no justification to mix up the other circumstances projected by the prosecution, which indeed required separate assessment and analysis. Be that as it may, appropriate now it would be to examine the circumstances put forth in this case to find if the prosecution has been able to bring home the guilt of the appellant beyond reasonable doubt.

Alleged last statement of deceased and motive of appellant

21. The main plank of prosecution case against appellant has been that the relations between the deceased and the appellant were too strained; the appellant was having illicit relations and was ill-treating the deceased; the deceased had expressed even threat to his life at the hands of the appellant; and the deceased was all set to move out of the company of the appellant. These factors, imputing motive on the appellant to kill her husband (and even deceased perceiving threat to his life at the hands of the appellant), have been held proved by the Trial Court and the High Court with reference to the testimony of PW-7 Brij Bhushan (brother of the deceased) and PW-8 Radha Puri (sister of the deceased). As noticed, the Trial Court as also the High Court have relied upon these two witnesses and have accepted their assertions in *toto*. However, a close look at the testimony of these witnesses and the assessment of their evidence with reference of other factors on record bring forth several doubts, which have not been dispelled and which do operate against the prosecution.

22. Though learned counsel of the appellant has attempted to suggest, with reference to additional documents placed on record, that PW-7 carried questionable antecedents and had been a proclaimed offender but we are ignoring such submissions for the reason that these aspects were not specifically put to the witness in his cross-examination. However, the question is as to whether his testimony inspires such confidence that all the facts and the circumstances suggested by him, and all his assertions, be accepted

on their face value In our view, the answer to this question could only be in the negative.

22.1. The Trial Court and the High Court have proceeded on the assumption that PW-7 being the brother of deceased, would not be interested in shielding the real culprit and to unnecessarily throw the accusation on the appellant but, in our view, such an approach had been fundamentally incorrect. In overall comprehension of the statement made by this witness, a few relevant factors are immediately noticeable that, after having served in Navy for about two years from 1978 to 1980, he had never been in a settled job or occupation. He served in different establishments; also opened a grocer's shop that was closed; again served in some more establishments; and then, established a factory that too was closed with about half of the amount of loan repaid and remaining being due. Significantly, the ancestral house of the family was sold by this witness and the proceeds were utilised by him in opening the grocer's shop, which was closed by him because he '*did not like that business*'. He had taken loan for establishing the factory and it had been the case of the appellant that he was pressurising her to stand as a guarantor and upon her refusal, the deceased Tirloki Nath stood as a guarantor. DW-3 Surinder Kumar Bhat, a colleague of the deceased, testified to the fact that the deceased remained disturbed for his younger brother (PW-7) regularly demanding money from him; and has narrated in detail the efforts that were made by the deceased in helping PW-7 Brij Bhushan getting some employment and he even asked for a loan from the society managed by DW-3. In the given state of affairs, this much is clear that the testimony of PW-7 is required to be approached with extra care and caution.

22.2. On a closer look at the record, it is noticed that some material improvements were made by PW-7 while deposing in the Court over the initial version, on the basis whereof FIR was registered by PW-9. For example, in the Court statement, this witness alleged that the deceased was apprehending murder by the appellant with the help of her brothers while improving over the expression that the deceased was '*fed up and frightened*', as occurring in the initial version. Further, the initial allegation that the appellant was not providing food to the deceased '*at proper time*' was improved in the Court statement to the effect that she was not providing food to the deceased.

22.2.1. Even if the aforementioned aspects are left aside for a moment and it be assumed that the deceased met PW-7 on 28.04.1997 and stated all his apprehensions as also the plan to leave Panchkula with luggage, it remains entirely inexplicable that such a concerned brother of the deceased did not accompany him to Panchkula for safety and support; and did not share the apprehensions stated by the deceased with other members of the family; and even did not enquire about the welfare of his brother for next three days. Obviously, the conduct of this witness had not been altogether free from doubt and his statement cannot be accepted without proper corroboration. Now, the attempted corroboration is suggested only with reference to the statement of the sister of this witness viz., PW-8 Radha Puri. However, her testimony carries excessive features of doubts, as would occur *infra*.

23. It is evident on the face of the record that in her testimony, PW-8 Radha Puri made several improvements over the statement made during investigation. The allegations that upon reaching the spot, she saw the appellant and her brothers '*enjoying tea*' were not made in her police statement. The witness had gone to the extent of stating that the deceased was attacked by his wife and children on two-three occasions though no such allegation appeared in her initial version during investigation. It is more than apparent that the efforts on the part of this witness PW-8 had been to level accusations not only against the appellant but even against the children of the appellant, particularly her daughter, by suggesting that the said daughter questioned her presence on the spot though such had not been the case of the prosecution. As regards the plot at Ambala Cantt., this witness gave out vacillating answers where she first of all stated want of knowledge; then stated that the plot was in the name of mother; and again stated her inability to say exactly in whose name it was. Leaving aside these aspects, the noteworthy feature emerging from her statement is the admission of the fact that the ancestral house was sold by Brij Bhushan (PW-7).

24. A combined look at the testimony of PW-7 and PW-8 brings to the fore one of the significant facts that there had been an ancestral house belonging to the family that was sold by PW-7 alone and the sale proceeds were utilised by him to open a grocery shop, one of the multiple ventures he had tried, mostly resulting in closure or failure. The appellant had been categoric in her assertion that the property and money had been at the root of discord in the family and

the same had been the cause for the family of the deceased implicating her. DW-3 has also testified to the effect that the deceased had his tense moments because of money demands of his brother i.e., PW-7. Unfortunately, the Trial Court as also the High Court have totally overlooked these factors and features hovering over the prosecution story.

25. Going further deep into the prosecution story, it is clear that there is no direct and cogent evidence on record that the appellant was involved in illicit relations or was forcing the deceased to transfer the property. It had not been the assertion of PW-7 or PW-8 that the alleged illicit relations of the appellant and/or her pressurising the deceased to transfer the property had been the matters of their personal knowledge. No particulars of any person having illicit involvement with the appellant are to be found on record. Such assertions have been made by these witnesses on the basis of the statements allegedly made by the deceased to each of them individually and at different point of time. The High Court and the Trial Court have readily accepted the suggestions of PW-7 and PW-8 that the deceased made the statements to them as alleged; and have even labelled the statement allegedly made to PW-7 as being the dying declaration of the deceased. Strictly speaking, the alleged statement made to PW-7 could not have been taken as a 'dying declaration' for the reason that at time of making of such statement, the deceased was not labouring under his imminent death and he was not recounting the circumstance of the transaction relating to his death. For the sake of arguments, and on the broad phraseology of the first part of Section 32 (1) of the Indian Evidence Act,

> **32. Cases in which statement of relevant fact by a person who is dead or cannot be found, etc., is relevant**.- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense, which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-
>
> (1) **when it relates to cause of death**.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which

resulted in his death, in cases in which the cause of that person's death comes into question.

Even if it be assumed that the statement made by the deceased, before the cause of death had arisen, or before he had any reason to anticipate his killing, may also be taken as admissible, Vide ***Pakala Narayana Swami v. The King-Emperor: AIR 1939 PC 47*** .

such an alleged statement cannot be directly acted upon without concrete corroboration. In the present case, what to say of corroboration, even making of such statement by the deceased appears to be doubtful.

25.1. The other prosecution witnesses have not even remotely indicated any traces of discord in the relations of the deceased and the appellant for any reason whatsoever. The appellant has specifically refuted such allegations in her statement under Section 313 CrPC. The defence witness DW-3 Surinder Kumar Bhat, who had been the colleague of the deceased and was living nearby, has been categorical that the deceased and the appellant were maintaining good relations and that the appellant was enjoying a good reputation. Nothing has occurred in his cross-examination to discredit this witness as untrustworthy. Another noteworthy factor emerges from the testimony of DW-4 Akhilesh Bhatnagar, Assistant, Oriental Insurance Company, Chandigarh. He has proved the hotel expenses bills paid by the employer of the deceased for his stay at Karnal from 14.01.1997 to 01.02.1997. If that were so, the assertion of PW-8 Radha Puri that the deceased made some statement to her at Yamuna Nagar on 25.01.1997 becomes doubtful. As noticed, though the husband of PW-8 (with whom she allegedly conferred about the alleged statement of the deceased) was cited as prosecution witness but was not examined in the Court.

26. We may, in the passing also point out another glaring factor in relation to the testimonies of PW-7 and PW-8. It is but apparent that PW-7, even before reaching the spot of crime, had already concluded that his brother had been murdered. In his words: '*I gave telephonic messages to my relatives regarding the murder of my brother*'. PW-8 has directly contradicted him while saying: '*On 1.5.97, I came to know through my brother Brij Bhushan that Tirloki Nath had committed suicide. He told that as per the information, the neighbourers at Panchkula told that Tirloki Nath had committed suicide*.' Another feature

of the case is that as per the site sketch prepared by PW-3 Manohar Lal, (Ex. PD), there was a bathroom-cum-toilet of 10 feet x 3 feet size, attached with the room in question where the deceased was putting up, as per the witnesses PW-7 and PW-8. It clearly belies the suggestion that the deceased was forced to use the washroom of the tenant at the ground floor.

27. For what has been discussed hereinabove, strong elements of doubts surface on record as regards reliability of these two witnesses PW-7 and PW-8. In the given circumstances, it is difficult to accept that the prosecution has been able to establish by cogent and reliable evidence that the appellant was involved in illicit relations or was pressurising the deceased to transfer the property in her name and that there had been strong acrimony between the deceased and the appellant. It is also difficult to accept, for want of cogent corroborative evidence, if the deceased had made any alleged statements about discord with his wife and threat perceptions to PW-7 and PW-8. In the given circumstances, the possibility of levelling of imputations on the appellant for intentions other than bringing the real culprit/s to the book is not ruled out altogether.

Last seen theory: Proof and effect

28. The prosecution has relied upon another circumstance that the deceased was lastly in the company of the appellant and she had failed to explain his whereabouts as also the circumstances leading to his death.

28.1. Insofar as the 'last seen theory' is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act 106. ***Burden of proving fact especially within knowledge.***- *When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.* directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das* (supra) in the following:-

"*10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.....*"

28.2. On the facts of the present case, it emerges that as per the version of PW-7, the deceased was lastly in his company on 28.04.1997 when he allegedly expressed his dejection and fear as also his plan to return with luggage. The appellant has pointed out that the deceased was with her in the morning of 29.04.1997 when he pointed out his tour programme commencing that day with scheduled return on 03.05.1997. It is not in dispute that the deceased was regularly on tour for longer durations of about two weeks in connection with his duties. The dead body was recovered on 01.05.1997 and as per post-mortem report, the probable time that had elapsed between death and postmortem (on 02.05.1997 at 12.30 p.m.) was 24 to 72 hours. On the basis of this opinion, it cannot be assumed by way of arithmetical calculation that the deceased might have met with his end on 29.04.1997. The possibility of it being a day later is not ruled out.

28.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In *SK. Yusuf* (supra), this Court has said:-

"*21. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.*"

Subsequent conduct of the appellant and other circumstances

29. The Trial Court and the High Court have readily, and rather heavily, relied upon an assertion made by PW-8 in her statement that upon her reaching the site, the appellant was 'enjoying

tea' with her brothers and other relations on the first floor; and was not found stressed or perplexed or saddened. This part of the assertion on the part of PW-8 has its own shortcomings. Such an assertion was not made by her in the police statement; and is not even remotely corroborated by any other prosecution witness including PW-7. Moreover, it had been too unrealistic on the part of the Trial Court and the High Court to observe that the appellant ought to have been found sitting with the dead body. Admittedly, the corpse was emitting foul smell and DW-8 reached the spot at about 4.30 in the morning though the appellant had noticed the dead body the previous evening and had taken steps for informing the concerned through DW-3, Surinder Kumar Bhat. In the given circumstances, no fault could be foisted on the appellant if she did not remain with the dead body all through and until arrival of PW-8. The expression 'enjoying tea' was coined by this witness PW-8 alone and for want of corroboration and for omission of such a fact in the police statement, there appears no reason to accept the same. If at all anything of subsequent conduct of appellant is to be taken into consideration, it is evident that she attended her office on 30.04.1997 and 01.05.1997. It is not the case of the prosecution that during these two days, any abnormality in her behaviour was noticed by anyone. The appellant neither concealed herself nor altered the scene of crime in any manner and there had not been any evidence about any oddity in her manners and demeanour.

30. Another circumstance taken against the appellant had been that she allegedly did not send any information to the brothers and other relations of the deceased immediately after noticing his death. Such observations and findings have been recorded against the appellant while totally overlooking the statement of DW-3. In this regard, it gets perforce reiterated that the prosecution has not produced any evidence which could displace the statement of DW-3 that he indeed informed the police at the asking of the appellant at about 9.30 p.m. on 01.05.1997 and did also inform the brother of the deceased. As noticed, PW-9 ASI Amar Singh did not specify as to how the information was received by him. Moreover, the person said to have divulged the information to the witness PW-7 was never examined. Given such omissions in the prosecution case, we find no reason to discard the testimony of DW-3. Once his testimony is accepted, several blocks of the prosecution story are knocked to the ground.

Effect of the acquittal of co-accused persons

31. There is yet another lacuna in the prosecution case that has magnified itself with acquittal of the co-accused, brothers of the appellant. It cannot be denied that if the appellant had been the killer, she, by herself, could not have hanged the dead body by the ceiling fan; and the act had definitely been performed by more than one person. That being the position, the Trial Court readily accepted the case against the brothers of the appellant as conspirators without cogent and convincing evidence. The High Court rightly acquitted them for want of evidence and even observed that the prosecution had failed to book the real culprit in place of the brothers of the appellant. However, the High Court yet considered it proper to maintain the conviction of the appellant as the principal culprit while failing to consider that an important link in the prosecution story was snapped as soon as brothers of the appellant were acquitted.

31.1. We would hasten to observe that merely for the reason of acquittal of co-accused, another accused in a criminal case may not be acquitted if cogent evidence against him is available and his case could be segregated from the case against the acquitted co-accused. However, on the basic facts of the present case, it is evident that the gruesome act in question had not been the handiwork of one person and it would be rather preposterous to assume that the appellant hanged the dead body by ceiling fan all by herself. In the given circumstances, when the alleged collaborators of the appellant are acquitted, the already existing clouds of doubts on the prosecution story get congealed. The High Court has proceeded with oversimplification of the matter by leaving the missing link as merely a fault of the investigating agency. In our view, as soon as the brothers of the appellant were acquitted, the High Court ought to have examined the consequence of such acquittal that an important link in the prosecution theory was snapped and it was difficult to conclude that the prosecution has established its case against the appellant beyond all reasonable doubts.

The prosecution case not established beyond reasonable doubt

32. Thus, as regards the circumstances relied upon by the prosecution, the position obtainable from the material placed on record and the surrounding factors is that (a) the death of deceased Tirloki Nath was homicidal in nature and had not been suicidal though it was sought to be projected as suicide by the culprits by

hanging the dead body from a ceiling fan in his room; (b) there is no cogent and convincing evidence on record to come to a definite conclusion that the relations of the deceased and the appellant were strained or that the appellant was indulgent in illicit relations or she was insisting for transfer of property in her name; (c) it is also difficult to come to a definite conclusion that the deceased had expressed imminent danger to his life at the hands of the appellant; and (d) even if the deceased was last seen alive in the company of the appellant, the time gap between such last seen and finding of his dead body had been of about 2 to 3 days.

33. Apart from the factors above, there are several other loopholes whereby the alleged circumstances sought to be relied upon by the prosecution lose their worth and force. As noticed, the investigating agency and the prosecution had not been forthright. The relevant aspects pertaining to the crime in question were not properly investigated and even the relevant witnesses were not examined. Moreover, as noticed, the prosecution case was framed in the manner that the appellant committed the crime with the help of her brothers who have been acquitted.

33.1. In the given circumstances, the fact that the staircase from the ground floor was directly leading to the room in question where the dead body was found, acquires immense significance. Even if it be assumed that the deceased was putting up in the said room, some person or persons reaching there directly from the ground floor and carrying out the crime is not ruled out. In the alternative, some person or persons having executed the crime at some other place and then having brought the dead body and hanged it in the room in question is also the possibility which cannot be brushed aside as entirely improbable.

34. In the given circumstances, when the prosecution has not been able to remove the aforesaid doubts and the motive as imputed on the appellant does not appear existing, the benefit of doubt, obviously, goes to the appellant.

CONCLUSION

35. For what has been discussed hereinabove, we are clearly of the view that the Trial Court and the High Court have approached the case from an altogether wrong angle and have overlooked the major flaws and shortcomings in the prosecution case. In the given set of facts and circumstances, even if the prosecution has been able to

create some suspicion against the appellant, it would be unsafe to accept that the implicating circumstances have been established by cogent evidence and such circumstances form a complete chain that rules out any other hypothesis except guilt of appellant. Hence, the conviction of the appellant cannot be sustained; she is entitled to the benefit of doubt.

36. Consequently, this appeal is allowed in the manner that the impugned judgment and orders convicting the appellant for the offence punishable under Section 302 IPC are set aside; the appellant is extended the benefit of doubt and is, accordingly, acquitted. Her bail bonds are cancelled and sureties are discharged.

***Result*:-** Appeal allowed.

ABC 2019 (III) 285 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Uday Umesh Lalit & Aniruddha Bose, JJ)

Criminal Appeal No. 1509 of 2019

(Arising out of Special Leave Petition (Crl.) No.9099 of 2016)

(From Hyderabad High Court)

Decided on 30 September 2019

B. KRISHNA REDDY ***- Appellant(s).***

Versus

SYED HAFEEZ (DIED) PER LR. SMT. NASEEMA BEGUM & ANR- Respondent(s).

Law Covered*:- *Negotiable Instruments Act, 1881 — Section 138— Cheque given towards consideration for purchase of a property— Neither any document nor any evidence that any conveyance was executed in favour of the appellant— Submission of the appellant that there was no existing debt or liability accepted — acquittal restore. (Para 7)

***Facts*:-** *The allegations in the complaint were that there was an oral sale of a property and towards consideration for said purchase, the appellant had given the cheque for Rs.4,00,000/-. However, the evidence on record discloses that no conveyance was executed in favour of the appellant and, as such, the very basic ingredient was not proved. the Trial Court found that no case was established as against the appellant and therefore the appellant was. However, the view taken by the Trial Court was upset by the High Court and the appellant was found guilty of the offence u/s 138*