with Deepa, the daughter of Ashwathamma. It has come on record through various witnesses that the people talked in the locality with regard to the involvement of the appellant with Deepa. It needs to be noted that Deepa, being not able to digest the humiliation, committed suicide. The mother and the brother of Deepa paved the same path. In such a situation, it is extremely difficult to hold that the prosecution has established the charge under Section 498Aand the fact that the said cruelty induced the wife to commit suicide. It is manifest that the wife was guided by the rumour that aggravated her suspicion which has no boundary. The seed of suspicion planted in mind brought the eventual tragedy. But such an event will not constitute the offence or establish the guilt of the accused-appellant under Section 306 of the IPC.

19. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify.

20. Consequently, the appeals are allowed. The conviction under Sections 306 and 498-A of the IPC is set aside. The appellant be set at liberty unless his detention is required in connection with any other case.

Result:- Appeals allowed.

ABC 2016 (II) 260 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Dipak Misra & Amitava Roy, JJ)
Criminal Appeal No. 1015 of 2010 with Criminal Appeal No. 1011 of 2010
(From Madras High Court)
Decided On 8 November, 2016

NATHIYA ***- Appellant(s).***

Versus

STATE REP. BY INSPECTOR OF POLICE, BAGAYAM POLICE STATION, VELLORE ***- Respondent(s).***

Law Covered:- (A) Indian Penal Code, 1860 — Section 302 r/w 34 — Indian Evidence Act, 1872 — Section 3 — Relevant fact — Illicit relation between the wife of deceased & Accused no.2 —

allegation of — Confessional statements — the witness did not reveal to anybody — not relied — Discloser by the deceased — not divulged to the police— Discarded being hearsay in nature— Suffocation — Medical evidence — External injury — absence of — No external injury indicative of use of any external force on the deceased, resulting in his ante-mortem suffocation — The possibility that injuries suffered were post fall manifestations— cannot be ruled out as the medical evidence admits of such an eventuality as well — Benefit of doubt — Held, the possibility of the deceased committing suicide as an extreme step in a unbearable anguished state of mind also cannot be wholly excluded — chain of circumstantial evidence relied upon by the prosecution to prove the charge is visibly incomplete and incoherent — Acquittal. (Para 9 & 10)

(B) Indian Penal Code, 1860 — Section 302 r/w 34 — Defence of accused — First informant being the cousin brother of the deceased had framed the appellants so as to wrest his property in absence of his legal heirs — cannot be lost sight of. (Para 10)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Circumstantial Evidence — Chain of — visibly incomplete and incoherent — the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" — as is indispensably required in law for conviction on a criminal charge — Conviction not sustainable. (Para 11)

(D) Criminal Jurisprudence — Criminal Trial — Suspicion — Held, in a criminal trial, suspicion, howsoever grave, cannot substitute proof. (Para 11)

(E) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Circumstantial Evidence — Evaluation of — Duty of the Court — Held, in scrutinizing the circumstantial evidence — a court is required to evaluate it to ensure that — the chain of events is established clearly and completely — to rule out any reasonable likelihood of innocence of the accused. (Para 12)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Circumstantial Evidence — Chain of Circumstances — completion of — Held, whether the chain is complete or not would depend on the facts of each case — emanating from the evidence & no universal yardstick should ever be attempted. (Para 12)

(G) Criminal Jurisprudence — Culpability of the accused — judging of — Held, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion — that the

accused alone is the perpetrator of the crime alleged — That the circumstances established must be of a conclusive nature — consistent only with the hypothesis of the guilt of the accused — was emphatically propounded. (Para 12)

Facts:- *It was alleged that the appellant, the wife of the deceased, had developed illicit relationship with accused no.2 which was not only to the knowledge of the deceased but also of the informant. It was alleged in the FIR that in retaliation to the persistent endeavours made by the deceased to make the appellant mend her ways, she used to torture him and threaten that she would eliminate him and would sell his properties and elope with her paramour. The informant claimed that not only a few days prior to the incident, the deceased had confided him that his wife had tried to suffocate him to death by pressing a pillow on his face. On the eve of the incident as well, he had disclosed to him about a conspiracy between the two accused persons to murder him and grab his properties. It was alleged that the accused persons committed the murder of the deceased by drowning him in a well.*

The accused were convicted u/s 302 r/w 34 IPC and sentenced. The same was upheld by the High Court. In the present appeal the honourable Supreme Court after observing the quality and content of the circumstantial evidence held that the prosecution has failed to prove its case. Benefit of doubt of doubt was given to the accused persons.

Law of relief:- ***First informant being the close relative of the deceased had framed the wife of the deceased so as to wrest his property in absence of his legal heirs, cannot be ruled out.***

Held:- The medical evidence does not refer to any external injury indicative of use of any external force on the deceased, resulting in his ante-mortem suffocation and loss of consciousness, to be thereafter dispatched into the well. The possibility that the cause of death i.e. grievous head injury, suffocation and heart failure were post fall manifestations, also cannot be ruled out as the medical evidence admits of such an eventuality as well.

The inexplicable omission on the part of the prosecution to produce and prove the alleged confessional statements made by the appellants and reduced into writing by PW9 and witnessed by PW10 substantially denudes its case of necessary credence to incriminate them. The oral testimony of these witnesses to the effect that such confessional statements had been recorded, ipso facto is of no consequence. Not only the contention that the supposed disclosure by

the deceased to PWs 1 and 2 about the immoral conduct of the appellants is discardable being hearsay in nature, deserves some reflection, it is noticeable that PW2, in his cross- examination, did admit that he had not divulged the above fact to the police. PW10, as well, did concede that he had not revealed to anybody about the confessional statements made by the accused persons. The recovery of a saree produced by Nathiya said to have been gifted to her by Suresh and their joint photograph, in the attendant facts and circumstances and in the face of the other evidence on record, does not clinch the issue in favour of the prosecution. (Para 9)

The defence proposition that PW1 being the cousin brother of the deceased had framed the appellants so as to wrest his property in absence of his legal heirs in the above factual premise, also cannot be lost sight of. The imputation of sustained unchaste conduct and the activities of the wife, if true, the possibility of the deceased committing suicide as an extreme step in an unbearable anguished state of mind also cannot be wholly excluded. (Para 10)

On an analysis of the overall fact situation, we are of the considered opinion that the chain of circumstantial evidence relied upon by the prosecution to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record do raise a needle of suspicion towards them, the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof. (Para 11)

As recently as in Sujit Biswas vs. State of Assam (2013) 12 SCC 406 and Raja @ Rajendra vs. State of Haryaya (2015) 11 SCC 43= ABC 2013(II) 13, it has been propounded that in scrutinizing the circumstantial evidence, a court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It was underlined that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. That in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged. That the

circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically propounded. (Para 12)

Cases Referred:-

1. *Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116. (Para 12)*
2. *Sujit Biswas vs. State of Assam (2013) 12 SCC 406= ABC 2013(II)13. (Para 12)*
3. *Raja @ Rajendra vs. State of Haryaya (2015) 11 SCC 43. (Para 12)*

JUDGMENT

AMITAVA ROY, J.: - The appellants being aggrieved by the affirmation of their conviction under Section 302 read with Section 34 IPC and the sentence of life imprisonment and fine of Rs. 10000/-, in default R.I. for further six months, by the High Court by its verdict dated 27.11.2008, seek this Court's panacean intervention for redress.

2. We have heard Mr. Jayant Muthur Raja, learned counsel for the appellant Nathiya, in Criminal Appeal No. 1015 of 2010, Mr. P.R. Kovilan, learned counsel for the appellant Suresh, in Criminal Appeal No. 1011 of 2010 and Mr. M. Yogesh Kanna, learned counsel for the State.

3. The prosecution was set in motion by the First Information Report lodged on 27.3.2006 at 2.30 a.m. by one Gunasekaran, the cousin brother of the deceased Gurunathan, the husband of the appellant Nathiya (accused No.1). The appellant Suresh (accused No. 2) is allegedly the paramour of accused No. 1. It was averred in the FIR that the deceased was a book binder by occupation and owned some properties located in his village, worth several lakhs. He also had his own house. The house of the appellant Suresh was also situated nearby. It had been alleged that the appellant Nathiya, the wife of the deceased had developed illicit relationship with Suresh which was not only to the knowledge of the deceased but also of the informant. The FIR discloses that this depraved liaison between the accused persons had also been brought to the notice of the local panchayat and that though, it had advised the appellants against the continuation of such alliance, they did not desist therefrom. Being appalled, though the deceased at some point of time, had shifted to a rented house elsewhere but had to return under financial compulsions to his original place of abode. This, according to the FIR, facilitated the continuance of the extra-marital relationship of Nathiya

with Suresh. It was alleged in the FIR that in retaliation to the persistent endeavours made by the deceased to make Nathiya mend her ways, she used to torture him and threaten that she would eliminate him and would sell his properties and elope with her paramour. The informant claimed that not only a few days prior to the incident, the deceased had confided him that his wife had tried to suffocate him to death by pressing a pillow on his face, on 26.3.2006, i.e. on the eve of the incident as well, he had disclosed to him about a conspiracy between the two accused persons to murder him and grab his properties.

4. The informant further mentioned that in the intervening night of 26.3.2006/27.3.2006, while he was asleep, Pushpa, wife of Dinakaran, his neighbour informed him that the dead body of the deceased had been seen floating in a nearby well. On getting this information, the informant rushed to the place of occurrence and with the help of Pandurangam and Dinakaran, retrieved the body from the well. On further enquries, he could come to learn that one Packiammal, at about 11 p.m., heard the shrieks of the deceased followed by a loud thud from the well. The informant referred to the accused persons as the suspects. It was incidentally mentioned as well that they were not available in their house at that point of time. This FIR was registered as Bagayam P.S. Crime No. 278 of 2006 and investigation followed.

5. Eventually the charge-sheet was submitted against the accused persons. The case was committed for sessions trial. The appellants having denied the charge, were made to stand trial and finally by the judgment and order dated 13.11.2007 passed in S.C. No. 94 of 2007, the appellants were convicted under Section 302 read with Section 34 IPC and sentenced as above. To reiterate, their conviction and sentence has been upheld by the High Court by the judgment and order impugned herein.

6. Before adverting to the rival submissions advanced, apt it would be to undertake an analysis of the evidence on record to the extent indispensable.

PW1 Gunasekaran, the informant while substantially reiterating his version in the FIR stated on oath that the deceased was a dwarf in structure and that though being exasperated with the incorrigible conduct of his wife in indulging in the extra-marital relationship with the Suresh, he had shifted his family to

Idaiyamsathu Village, because of his meager means, he could not afford to stay there and returned to Kollaimedu within three months. The witness stated that the deceased inspite of his best efforts could not stop the unwholly alliance between the accused persons and used to very often share his distress with him. He stated that on receiving the information about the dead body of the deceased in the well, he rushed to the place of occurrence and, amongst others, saw that chappals of the deceased lying by the side of the well. He owned the FIR lodged by him and reiterated the suspicion about the culpability of the two appellants.

In cross-examination, he denied the defence suggestion that the the grand-father of the deceased had executed a will in favour of him as well as the deceased. He admitted that the appellant Nathiya and her daughter were the only legal heirs of the deceased and that no incriminating material was recovered by the police from the house of Nathiya. He admitted as well to have not disclosed the illicit relationship between the appellants to the police. He admitted too that the well was located at a distance of 2.5 feet from the house of Packiammal and that there were other houses situated within 200 feets from there.

PW2 Rajan, who was also a resident of Idaiyamsathu Village, deposed that the appellant Nathiya did not respect the deceased as her husband, who did not know swimming and cycling. He stated that on 26/27.3.2006, while he was sleeping, he heard that the deceased had fallen in the well and on reaching the spot, found his dead body floating in the well with his face downwards. He mentioned too about the illicit relationship between the two appellants for which time and again, the deceased had warned his wife Nathiya. He also claimed that the deceased had disclosed to him about the immoral character of his wife for which he used to console him. He stated as well that few days prior to the incident, the deceased had disclosed to him that Nathiya had tried to murder him by covering his face with a pillow.

In cross-examination, however he conceded that he had not disclosed to the police about the incident of the attempt to murder the deceased by his wife. The witness admitted that PW1 and the deceased had equal shares in the well. He also admitted of not having disclosed to the police about the immoral relationship between the appellants.

PW3 Packiammal stated on oath to have heard in the intervening night of 26/27.3.2006, cries of someone and then a sound from the well. She thereafter raised alarm apprehending that some body might have fallen in the well and that in the next morning, she heard that Gurunathan had died. She stated that the house of the deceased and that of the Suresh were near that of hers.

PW4 Dinakaran testified that in the night of the occurrence, Packiammal (PW3) had raised alarm whereupon he went to the place of occurrence and found that the deceased had fallen into the well whereafter his body was taken out therefrom. According to him, though the police reached the place of occurrence some time thereafter, he was not interrogated. He, however mentioned about the presence of both the appellants at the time when the dead body was retrieved from the well at about 11 p.m. He stated as well that the appellant Nathiya was weeping, sitting near the dead body.

PW5 Dr. Anbalagan, who performed the post-mortem examination of the dead body on 27.3.2006 at about 6.30 p.m. detected the following extrenal injuries:

1. Lacerated wound 2 cm x 1 cm x ½ cm. deep on the right side and back.

2. One cut injury measuring 2 cm x 1 cm x ½ cm. deep on the rear part of the head.

PW5 mentioned that the occipital bone was broken measuring 3 c.m. on rear part of the head and that blood clot was also found on the broken bone. Amongst the internal injuries detected, he mentioned about traverse fracture of the occipital bone. He opined that the deceased had died due to grievous head injuries, suffocation and heart failure. According to him, the deceased appeared to have died because of drowning in the water. He admitted that if a person becomes unconscious out of suffocation and is thrown into a well, he is likely to die of the above injuries.

In cross-examination, he however opined as well that if a person falls from a very high height, he is likely to sustain injuries on the rear part of the head.

PW9 Kamalakannan, Village Administrative Officer, at the relevant time, testified that on 27.3.2006, both the appellants had appeared at his office and had voluntarily confessed that they had smothered the deceased and that thereafter had pushed him down in

the well. This witness stated that the confessional statements of the appellants were recorded by him in the presence of Kothandan, his assistant and Palavansathukuppam Gunasekaran, Village Administrative Officer, Virupatchipuram Village and that thereafter he had handed over the accused persons with the confessional statements to the police. He denied the suggestion that the accused persons had not appeared before him at his office or had not made any confessional statement.

PW10 Kothandan, who at the relevant time, was the Village Assistant at Palavansathu Village, deposed that on 27.3.2006, while he, Kamalakannan, Village Administrative Officer and Palavansathukuppam Gunasekaran, Village Administrative Officer, Virupatchipuram were present in their office, the appellants appeared there and voluntarily gave their confessional statements admitting to have killed the deceased and thrown him in the well. The witness affirmed as well that their statements were recorded by PW9 Kamalakannan, whereafter they had taken the appellants to the police station following which they were arrested. He also stated that the confessional statements were handed over to the police. According to this witness, appellant Nathiya also produced the saree gifted to her by Suresh and the witness identified the said article as MO1. He also referred to a photograph of the appellants produced by Suresh before the police and exhibited the same as MO2.

In cross-examination, this witness admitted to have signed the voluntary statement along with PW9 Kamalakannan. He however admitted that he did not disclose about the confessional statements to anybody. He denied the suggestion that neither the appellants had appeared at the office of the Village Administrative Officer nor had made any confessional statement.

PW11 Kumar Devikan, the Investigating Officer, amongst others, admitted that on 27.3.2006 at about 2 p.m., the appellants were produced before him at the police station by the Village Administrative Officer of Palavansathu and Virupatchipuram along with their confessional statements.

7. The learned counsel for the appellants have argued that the circumstantial evidence adduced by the prosecution, in absence of any eye witness to the incident, is extremely shaky, incomplete and incoherent so as to warrant conviction of the appellants and they are thus entitled in law to be exonerated from the charge of murder

levelled against them. While repudiating the alleged disclosures by the deceased about the infidel character of his wife to PW1 and PW2, as reproduced by them, to be hearsay evidence and thus of no significance, it has been urged that the prosecution case stands discredited as well on the ground of suppression of the alleged confessional statement of the appellants recorded by the Village Administrative Officer. Apart from the fact that the deceased was not seen in the company of the appellants immediately prior to the incident and that thus the "last seen theory" is not applicable to the facts of the case, they have urged that the medical evidence as well does not conclusively prove that the death of the deceased was homicidal and not suicidal. Dismissing the recovery of saree and the photograph of the appellants to be wholly inconsequential in the face of want of any credible evidence to establish the complicity of the appellants with the crime, it has been insistently argued that the possibility of PW1, the cousin brother of the deceased, who had been interested in this property, falsely implicating the appellant Nathiya in particular for illegal gain, cannot be wholly ruled out. The learned counsel have maintained in unison that even assuming that the imputation of illicit relationship between the appellants had been proved, the same per se, even if at the best is a suspicious circumstance, does not establish beyond reasonable doubt the culpability of the appellants. In the prevalent facts and circumstances, the possibility of the deceased committing suicide cannot be excluded and that on that count as well, the appellants are entitled to the benefit of doubt .

As against this, the learned counsel for the respondent has argued that the evidence adduced on behalf of the prosecution is adequately cogent, persuasive and clinching and thus in the face of concurrent findings of the guilt of the appellants, this Court would not upturn the same. According to him, the factum of sustained illicit relationship between the appellants has been proved beyond doubt and in the face of the revelation made by the deceased about the previous attempts to eliminate him, the charge against the appellants stands proved on the basis of the materials on record. Referring to the medical evidence, the learned counsel has argued that it is apparent therefrom that the deceased was first smothered and then thrown into a well in an unconscious state whereupon he died due to the head injuries sustained. According to the learned counsel, the omission on the part of the prosecution to produce the recorded confessional

statements of the appellants is wholly insignificant in the face of the sworn testimony of PW9 and PW10 to that effect.

8. The competing arguments and the materials on record have received our due scrutiny. It is patent in the present factual setting that there is no eye witness to the occurrence and that the prosecution case is based wholly on circumstantial evidence. The genesis of the suspicion against the appellants, being their amorous association to the anguish disliking of the deceased, he being almost reduced to a helpless entity, having failed to prevent such liaison inspite of his best endeavours. There is indeed some evidence suggestive of such an alliance between the appellants at the relevant point of time. This, per se, in our comprehension, however, cannot be accepted as a decisive incriminating factor to deduce their culpability qua the charge of murder of the deceased Gurunathan.

9. The place of occurrence is a well, away from the residence of the deceased for which any definitive presumption against his wife Nathiya, as a conspirator of the crime, cannot be drawn without the risk of going wrong to cast a burden on her, as contemplated under Section 106 of the Evidence Act.

The closest circumstance bearing on the incident is, discernible from the testimony of PW3 Packiammal who stated to have heard the shrieks of the deceased, followed by a loud sound of a fall inside the well. There is no evidence that immediately thereafter, the appellants were seen in the vicinity of the well. Noticeably, the chappals of the deceased were found by the side of the well. The evidence of PW4 Dinakaran is, however, to the effect that when the dead body was recovered thereafter from the well, both the appellants were present and Nathiya, the wife of the deceased, was seen weeping by his side.

The medical evidence does not refer to any external injury indicative of use of any external force on the deceased, resulting in his ante-mortem suffocation and loss of consciousness, to be thereafter dispatched into the well. The possibility that the cause of death i.e. grievous head injury, suffocation and heart failure were post fall manifestations, also cannot be ruled out as the medical evidence admits of such an eventuality as well.

The inexplicable omission on the part of the prosecution to produce and prove the alleged confessional statements made by the appellants and reduced into writing by PW9 and witnessed by PW10 substantially denudes its case of necessary credence to

incriminate them. The oral testimony of these witnesses to the effect that such confessional statements had been recorded, ipso facto is of no consequence. Not only the contention that the supposed disclosure by the deceased to PWs 1 and 2 about the immoral conduct of the appellants is discardable being hearsay in nature, deserves some reflection, it is noticeable that PW2, in his cross-examination, did admit that he had not divulged the above fact to the police. PW10, as well, did concede that he had not revealed to anybody about the confessional statements made by the accused persons. The recovery of a saree produced by Nathiya said to have been gifted to her by Suresh and their joint photograph, in the attendant facts and circumstances and in the face of the other evidence on record, does not clinch the issue in favour of the prosecution.

10. The defence proposition that PW1 being the cousin brother of the deceased had framed the appellants so as to wrest his property in absence of his legal heirs in the above factual premise, also cannot be lost sight of. The imputation of sustained unchaste conduct and the activities of the wife, if true, the possibility of the deceased committing suicide as an extreme step in an unbearable anguished state of mind also cannot be wholly excluded.

11. On an analysis of the overall fact situation, we are of the considered opinion that the chain of circumstantial evidence relied upon by the prosecution to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record do raise a needle of suspicion towards them, the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

12. The classic enunciation of the law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable to the decision of this Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116***. The relevant excerpts from paragraph 153 of the decision is assuredly apposite:

> "153.(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused...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.

* * * (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."

As recently as in ***Sujit Biswas vs. State of Assam (2013) 12 SCC 406 = ABC 2013(II)13*** and ***Raja @ Rajendra vs. State of Haryaya (2015) 11 SCC 43,*** it has been propounded that in scrutinizing the circumstantial evidence, a court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It was underlined that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. That in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged. That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically propounded.

13. Tested on the touchstone of the above judicially laid parameters, defining the quality and content of the circumstantial evidence, essential to bring home the guilt of an accused person on a criminal charge, we are of the unhesitant opinion that the prosecution, in the case in hand, has failed to meet the same. The materials on record admit of substantial doubt vis-a-vis the complicity of the appellants in the crime.

14. Having regard to the evidence adduced, it would be wholly unsafe to sustain their conviction. They are thus entitled to the benefit of doubt. The appeals thus succeed and are allowed. The bail bonds of appellant Nathiya, who is on bail, stands discharged. Appellant Suresh be released from the jail immediately, if not required in any other case.

***Result*:-** Appeals allowed.