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SHARAD BIRDHI CHAND SARDA

v.

STATE OF MAHARASHTRA

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July 17, 1984

[S. MURTAZA FAZAL ALI, A. VARADARAJAN AND SABYASACHI MUKHARJI, JJ.]

Constitution of India, 1950, Article 136—Interference by the Supreme Court with the concurrent findings of fact of the courts below, normally not permissible—
C *Special circumstance like errors of law, violation of well established principles of criminal jurisprudence etc. would be necessary for interference.*

Evidence—Circumstantial evidence, nature and proof of —Conditions precedent for conviction—Evidence Act Section 3 (Act 1 of 1972).

Evidence—Circumstantial evidence—Onus of proof—Prosecution must prove
D *every link of the chain and complete chain—Infirmity or lacuna in the prosecution cannot be cured by false defence or plea—A person cannot be convicted on pure moral conviction—False explanation can be used as additional link to fortify the prosecution case, subject to satisfaction of certain conditions.*

Doctrine of Proximity, concept of, nature and limits explained-Admissibility of statements and dying declarations under sections 8, 32 of the Evidence Act.
E

Murder by administration of poison—Circumstances that should be looked into before a conviction—Penal Code (Act XLV of 1860) Section 300.

Evidence, appreciation of —Evidence of interested witnesses, especially that of close relatives of the deceased—Duty of the Court—Evidence Act (Act I of 1872) Section 3.
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Benefit of doubt—When two views are possible, one leading to the guilt of the accused and the other leading to his innocence, the benefit of doubt should go to the accused entitling his acquittal—Evidence Act (Act I of 1872) Sections 101 -104.

Examination of the accused under Section 313 of Crl. P.C.—Circumstances
G *not put to the accused to explain, cannot be considered for conviction—Code of Criminal Procedure, 1973 (Act II of 1974) Section 313.*

The appellant, Rameshwar, Birdhichand Sarda, Ramvilas Rambagas Sarda, were accused 1, 2 and 3 respectively in Sessions Case No. 203 of 1982 on the file of the Additional Sessions Judge, Pune. The appellant and the second accused are the sons of one Birdhichand of Pune whose family has a cloth
H business. In addition, the appellant, a graduate in Chemical Engineering had

started a chemical factory at Bhosari, a suburb of Pune. The third accused is uncle of the appellant and the second accused. The appellant is the husband of Manjushree alias Manju while the second accused is the husband of Anuradha (P.W. 35). Birdhichand's family has its residential house at Ravivar Peth in Pune and owns a flat in a building known as Takshasheela Apartments in Mukund Nagar area of Pune. All the three accused were charged for the alleged offence of murder by poisoning on the night of 11/12.6,1982 of Manju the newly married wife of the first accused and the appellant herein under section 302 I.P.C. read with section 120B. Accused No. 3was also charged under section 201 read with Section 120B I.P.C. The whole case vested on the circumstantial evidence based on certain letters alleged to have been written by the deceased to some of the witnesses and other statements of the deceased to them and the medical report. On an appreciation of the evidence the trial court found all the three accused guilty as charged, convicted them accordingly and sentenced the appellant to death under s.302 I.P.C. and all the three accused to rigorous imprisonment for two years and a fine of Rs. 2,000 each under s.120B I.P.C. but did not award any sentence under s.201 read with s.120B.

The appellant and the other two accused file Criminal Appeal No. 265/83 against their conviction and the sentences awarded to them. The State filed a Criminal Revision application for enhancement of the sentence awarded to accused 2 and 3. The appeal as well as Criminal Revision application was heard along with confirmation case No. 3 of 1983 together by the Division Bench of the Bombay High Court which allowed the appellants appeal in part regarding his conviction and sentence under s.120B I.P.C. but confirmed his conviction and sentence of death awarded under section 302 I.P.C., allowed the appeal of accused 2 and 3 in full and acquitted them and dismissed the Criminal Revision Application. Hence the appellant alone has come up before the Supreme Court after obtaining Special Leave.

Allowing the appeal, the Court

HELD : (Per Fazal Ali, J.).

1:1. Normally, the Supreme Court does not interfere with the concurrent findings of the fact of the courts below in the absence of very special circumstances or gross errors of law committed by the High Court. But, where the High Court ignores or overlooks the crying circumstance and proved facts, or violates and misapplies the well established principles of criminal jurisprudence or decision rendered by this Court on appreciation of circumstantial evidence and refuses to give benefit of doubt to the accused despite facts apparent on the face of the record or on its own finding or tries to gloss over them without giving any reasonable explanation or commits errors of law apparent on the face of the record which results in serious and substantial miscarriage of justice to the accused, it is the duty of this Court to step in and correct the legally erroneous decision of the High Court. [174E-G]

1:2. Suspicion, however, great it may be, cannot take the place of legal proof. A moral conviction however, strong or genuine cannot amount to a legal convicition supportable in law. [174H]

1:3. The well established rule of criminal justice is 'fouler the crime higher the proof'. In the instant case, the life and liberty of a subject was at

A stake. As the accused was given a capital sentence a very careful cautious and meticulous approach necessarily had to be made by the Court. [175A]

2:1. The Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English law where only the statement which directly relate to the cause of death are admissible. The second part of cl.(1) of s.32, viz, "the circumstances of the transaction which resulted B in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law. [107F-G]

2:2. From a review of the various authorities of the Courts and the clear language of s.32(1) of Evidence Act, the following propositions emerge : [108F]

C (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies. whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or relates to circumstances leading to the death. In this respect, Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of s.32 to avoid injustice. [108G-H]

D (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or very with the circumstances of each case. For instance, where death is a logical clumination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as on organic E whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statements may be admissible under s.32. [109B-D]

F (3) The second part of cl.1 of s.32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sancity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that G the statement was secured either by prompting or tutoring. [109E-F]

(4) Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstance which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide. [109-G]

(5) Where the main evidence consists of statements and letters written H by the deceased which are directly connected with or related to her death and

which reveal a tell-tale story, the said statement would clearly fell within the four corners of s.32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant. [109H] A

Hanumant v. *State of Madhya Pradesh* [1952] S.C.R. 1091 ; *Dharambir Singh* v. *State of Punjab* Criminal Appeal No. 98 of 1958 decided on 4.11.58 =AIR 1958 SC 152 ; *Ratan Gond* v. *The State of Bihar* [1959] SCR 1336 ; *Pakala Narayana Swami* v. *Emperor* AIR 1939 PC 47 ; *Shiv Kumar & Ors* v. *The State of Uttar Pradesh* Crl. Appeal No. 55 of 1966 decided on 29.7.66 =(1966) Crl. Appeal SC 281 ; and *Protima Dutta & Anr.* v. *The State*, C.W.N. 713 referred to. B

Manohar Lal & Ors. v. *State of Punjab* [1981] Cr.L.J, 1373 ; *Onkar* v. *State of Madhya Pradesh* [1974] Crl. L.J. 1200 ; *Allijan Munshi* v. *The State* AIR 1960 Bom. 290 ; *Chinnavalayan* v. *State of Madras* [1959] M.L.J. 246 ; *Rajindera Kumar* v. *The State* AIR 1960 Punjab 310 ; and *State* v. *Kanchan Singh & Anr.* AIR 1954 All. 153. approved. G

Gokul Chandra Chatterjee v. *The State*, AIR 1950 Cal. 306, overruled.

3:1. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law. However, where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case the same could be cured or supplied by a false defence or a plea which is not accepted by a Court [162C-E] D E

3:2. Before a false explanation can be used as additional link, the following essential conditions must be satisfied : [165E]

1. Various links in the chain of evidence led by the prosecution have been satisfactorily proved ;[165F]

2. The said circumstance point to the guilt of the accused with reasonable definiteness and; [165G] F

3. The circumstances is in proximity to the time and situation.[165H]

If these conditions are fulfiled only then a Court can use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise. On the facts and circumstances of the present case this does not appear to be such a case. There is a vital difference between an incomplete chain of circumstances and a circumstance, which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is enable to prove any of the essential principles laid down in *Hanumant's* case. the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. [166A ; 166D-E] G H

3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in *Hanumat's* v. *State of M.P.* [1953] SCR 1091. [163C]

1. The circumstances from whieh the conclusion of guilt is to be drawn should be fully established ; [163D]

2. The facts so estahlisbed should be consistent with the hpyothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty ; [163G]

3. The circumstances should be of a conclusive nature and tendency; [163G]

4. They should exclude every possible hypothesis except the one to be proved ; and[163H]

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. [164B]

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a *corpus deliciti*. [164B]

Harumant v. *The State of Madhya Pradesh* [1952] SCR 1091 ; *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [1969] 3 SCC 198 ; *Ramgopal* v. *State of Maharashtra* AIR 1972 SC 656 ; and *Shivaji Sahabrao Babode & Anr.* v. *State af Maharashtra* [1973] 2 SCC 793 referred to.

3:4. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction. [164F]

The King v. *Horry* [1952] N.Z.L.R. 111 quoted with approval.

Hanumant v. *State of M.P.* [1952] S.C.R. 1091 ; *Dharambir Singh* v. *The State of Punjab* (Criminal Appeal No. 98 of 1958 decided on 4.11.58) ; *Chandrakant Nyslchand Seth* v. *The State of Bombay* (Criminal Appeal No. 120 of 1957 decided on 19.2.58) *Tufail (aias) Simmi* v. *State of U.P.* [1969] 3 S.C.C. 198 ; *Ramgopal* v. *State of Maharashtra* AIR 1972 SC 656 ; *Naseem Ahmed* v. *Delhi Administration* [1974] 2 SCR 694/696 *Mohan Lal Pangasa* v. *State of U.P.* A.I.R. 1974 SC 1144/46 ; *Shankarlal Gyarasilal Dixit* v *State of Maharashtra* [1981] 2 SCR 384/390 ; and *M.C. Agarwal* v. *State of Maharashtra* [1963] 2 SCR 405/419 referred to.

Denonandan Mishra v *The State of Bihar* [1955] 2 SCR 570/582 distinguished.

Some of the statements which have a causal connection with the death of Manju or the circumstances leading to her death are undoubtedly admissible

under section 32 of the Evidence Act but other statements which do not bear any proximity with the death or if at all very remotely and indirectly connected with the death would not be admissible. [121H]

3.5 In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. This is human phychology and no one can help it. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a phychological hatred against the supposed murdrer, the court has to examine the evidence of interested witnesses with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it they would be guided by a spirit of revenge or nemesis agaisnt the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. [122C-D]

3.6. A close and careful scrutiny of the evidence of the witness (PWs 2, 3, 4 and 5) who are close relatives or deceased and conspicuously reveals a story which is quite different from the one spelt out from the letters (Exhs. 30, 32 and 33). In fact, the letters have a different tale to tell particularly in respect of certain matters. They are : [138D]

(i) There is absolutely no reference to suicidal pact or the circumstances leading to the same; (ii) There is no reference even to Ujvala and her illcit relations with the appellant ; (iii) There is no mention of the fact that the deceased was not at all willing to go to Pune and that she was sent by force ; (iv) The complaints made in the letters are confined to illtreatment, loneliness, neglect and anger of the husband but no apprehension has been expressed in any of the letters that the deceased expected imminent danger to her life from her husband ; (v) In fact, in the letters she had asked her sister and friend not to disclose her and plight to her parents but while narrating the facts to her parents, she herself violated the said emotional promise which appears to be too good to be true and an after thought added to strengthen the prosecution case ; and (vi) If there is anything inherent in the letters it is that because of her miserable existence and gross ill-treatment by her husband, Manju might have herself decided to end her life, rather than bother her parents. Therefore, these witnesses are not totally dependable so as to exclude the possibility of suicide and to come to an irresistible inference, that it was the appellant who had murdered the deceased. Though a good part of the evidence is undoubtedly admissible, its probative value is precious little in view of the several improbabilities, [138E-H ; 139A-B]

4.1. It is well-settled that where on the evidence two possibilities are available or open one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. [166H]

A In the instant case, the evidence clearly shows that two views are possible—one pointing to the guilt of the accused and the other leading to his innocence. It may be very likely that the appellant may have administered the poison (potassium cyanide) to Manju but at the same time a fair possibility that she herself committed suicide cannot be safely excluded or eliminated. Hence, on this ground alone the appellant is entitled to the benefit of doubt resulting in his acquittal. [168B]

B 4.2. In the cases of murder by administering poison, the Court must carefully scan the evidence and determine the four important circumstances which alone can justify the conviction : (i) There is a clear motive for an accused to administer poison to the deceased ; (ii) that the deceased died of poison said to have been administered ; (iii) that the accused had the poison in his possession ; and (iv) that he had an opportunity to administer the C poison to the accused. [167F-H]

4.3. In the instant case, taking an over all picture on this part of the prosecution case the position seems to be as follows : [150D]

1. If the accused wanted to give poison while Manju was wide awake, D she would have put up stiffest possible resistance as any other person in her position would have done. Dr. Banerjee in his post-mortem report has not found any mark of violence or resistance even if she was overpowered by the appellant she would have shouted and cried and attracted persons from the neighbouring flats which would have been a great risk having regard to the fact that some of the inmates of the house had come only a short-while before the appellant. [150E-F]

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2. Another possibility which cannot be ruled out is that pottasium cyanide may have been given to Manju in a glass of water if she happened to ask for it. But if this was so, she being a chemist herself would have at once suspected some foul play and once her suspicion would have arisen it would be very difficult for the appellant to murder her. [150G]

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3. The third possibility is that as Manju had returned pretty late to the flat and she went to sleep even before the arrival of the appellant and then he must have tried forcibly to administer the poison by the process of mechanical suffociation, in which case alone the deceased could not have been in a position to offer any resistence but this opinion of doctor, has not been accepted by the High Court, after a very elaborate consideration and discussion of the G evidence, the circumstances and the medical authorities, found that the opinion of the doctor that Manju died by mechanical suffocation had not been proved or at any rate it is not safe to rely on such evidence. [150H ; 151A-C]

4. The other possibility that may be thought of is that Manju died a natural death. This also is eliminated in view of the report of the Chemical Examiner as confirmed by the post mortem that the deceased died as a result H of administration of potassium cyanide. [152B]

5. The only other reasonable possibility that remains is that as the deceased was fed up with the maltreatment by her husband, in a combined spirit of revenge and hostility after entering the flat she herself took potassium cyanide and lay limp and lifeless. When the appellant entered the room he must have thought that as she was sleeping she need not be disturbed but when he found that there was no movement in the body after an hour his suspicion was roused and therefore he called his brother from the adjacent flat to send for Dr. Lodha. [152C-D]

In these circumstances, it cannot be said that a reasonable possibility of the deceased having committed suicide as alleged by the defence cannot be safely ruled out or eliminated. It is clear that the circumstances of the appellant having been last seen with the deceased and has administered the opinion has not been proved conclusively so as to raise an irresistible inference that Manju's death was a case of blatant homicide. [152E-F]

Further, in a matter of this magnitude it would be quite natural for the members of the appellants family to send for their own family doctor who was fully conversant with the ailment of every member of the family. In these circumstances there was nothing wrong if the appellant and his brother went to a distance of one and a half kilometer to get. Dr. Lodha. Secondly, Dr. Shrikant Kelkar was a skin specialist whereas Dr. (Mrs,) Anjali Kelkar was a Paediatrician and the appellant may have genuinely beleived that as they belonged to different branches, they were not at all suitable to deal with such a serious case. The High Court was, therefore, wrong in treating this circumstance namely not calling the two Doctors in the flat, as an incriminating conduct of the appellant. [157B-D]

The circumstances which were not put to the appellant in his examination under S. 313 of the Criminal Procedure Code must be completely excluded from considerating because the appellant did not have any chance to explain them. Apart from the aforesaid comments there is one vital defect in some of the circumstances relied upon by the High Court namely circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. [160B ; 159B-C]

Fateh Singh Bhagat Singh v. *State of Mdhaya Pradesh* AIR 1953 SCR 468 ; *Shamu Balu Chagule* v. *State of Maharashtra* 1976 1 SCC 438 and ; *Harijan Megha Jesha* v. *State of Gujarat* AIR 1979 SC 1566 referred to.

6. Viewing the entire evidence, the circumstance of the case and the interpretation of the decisions of the Supreme Court the legal and factual position are (i) that the five golden principles enunciated by the Supreme Court in *Hanumant* v. *The State of M.P.* [1952] SCR 1091 have not been satisfied in the instant case. As a logical corollary, it follows that cannot be held that the act of the accused cannot be explained on any other hypothesis except the guilt of the appellant nor can it be said that in all human probability, the accused had commited the murder of Manju. In other words, the prosecution has not fulfilled the essential require ments of a criminal case which rests purely on circumstantial evidence ; (ii) From the recital in the letters Ex. P30, Ex-P32 and Ex-P33 it can be safely held

A that there was a clear possibility and a tendency on the part of the deceased Manju to commit suicide due to desperation and frustration. She seems to be tried of her married life, but she still hoped against hope that things might improve. She solemnly believed that her holy union with her husband bring health and happiness to her but unfortunately it seems to have ended in a melancholy marriage which left her so lonely and frustrated so much of emotional disorder resulting from frustration and pessimism that she was forced to end her life. There can be no doubt that Manju was not only a sensitive and sentimental B women was extremely impressionate and the letterts show that a constant conflict between her mind and body was going on and unfortunately the circumstances which came into existance hastened her end. People with such a psychotic philosopy or bent of mind always dream of an ideal and if the said ideals fails, the failure drives them to end their life, for they feel that no charm is left in their life ; (iii) The prosecution has miserably failed to prove one of the most essential ingredients of a case of death caused by adminstration of poison C i.e.. possession with the accused (either by direct or circumstantial evidence) and on this ground alone the prosecution must fails . (iv) That is appreciating the evidence, the High Court has clearly misdirected itself on many points, and has thus committed a gross error of law ; (iv) That the High Court has relied upon decisions of this Court which are either in applicable or which, on closer examination, do not support the view of the High Court being clearly distinguishable ; (vi) That the High Court has taken a completely wrong view of law in D holding that even though the prosecution may suffer from serious infirmities it could be reinforced by additional link in the nature of false defence in order to supply the lacuna and has thus committed a fundamental error or law ; (vii) That the High Court has not only misappreciated the evidence but has complete ly overlooked the well established principles of law and has merely tried to accept the prosecution case based on tenterhooks and slender tits and bits ; (viii) It is wholly unsafe to rely on that part of the evidence of Dr. Banerjee (PW 33) E which shows that poison was forcibly administered by the process of mechanical suffociation ; (ix) There is no manifest defect in the investigation made by the police which appears to be honest and careful. A proof positive of this fact is that even though Rameshwar Birdichand and other members of his family who had practically no role to play had been arraigned as accused but they had to be acquitted by the High Court for lack of legal evidence ; (x) That in view of the F findings two views are clearly possible in the present case, the question of defence being false does not arise. [172E-H ; 173A-H ; 174A-D]

Per Varadarajan, J.

(Per contra on facts.)

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1 :1. The three letters Exh. P 30, Exh. P 32 and Exh. P 33 and the oral evidence of PWs. 2, 3, 5, 6, and 20 are inadmissible in evidence under section 32 (1) of the Evidence Act. There is no acceptable evidence on record to show tnat either the appellant or his parents illtreated the deceased Manju and that the appellant had any illicit intimacy with PW 37 Ujvala. The alleged oral statement of Manju and what she has stated in her letters Exh. 30, 32 and 33 may relate to matters perhaps having a very remote bearing on the cause or the cir- H cumstances of her death. Those circumstances do not have any proximate

relation to the actual occurence resulting in her death due to potassium cyanide poison, though for instance in the case of prolonged poisoning they may relates to dates considerably distant from the date of the actual fatal dose. They are general impressions of Manju indicating fear or suspicion, whether of a particular individual or otherwise and not directly related to the occasion or her death. It is not the case of the prosecution either that the present case is one of porlonged piosoning. [187B]; 190D-F]

1 : 2. The fact that the High court has rejected the case of the prosecution based on Dr. Banerjee's report and evidence that it was also a case of mechanical suffoctation is not one that could be taken into consideration as a mitigating circumstance in judging the conduct of the doctor who had conducted the autospy in a case of suspicious death. The conduct of the doctor in making certain later interpolations in the case of suspicious death in which the appellant has been sentenced to death by the two courts below deserves serious condemnations. The doctor has tempered with material evidence in the case of alleged murder may be at the instance of somebody else, ignoring the probable consequences of his act. In these circumstances Dr. Banerjee PW 33 is person who should not be entrusted with any serious and responsible work such as conducting autopsy in public interest. In this case the appellant would have gone to gallows on the basis of the evidence of PW 33 as he would have the Court to believe it, and the other evidence, if they had been accepted. [193D-H]

1 : 3. Section 313 Criminal Procedure Code lays down that in every inquiry or trial for the purpose of enabling the accused personally to explain any circumstance appearing in the evidence against him, the court may at any stage without previously warning the accused, put such questions to him as the court considers necessary and shall, after the witnesses for the prosecution have been examined and before he is called for his defence, question him generally on the case. Hence the evidence on the basis on which question Nos. 25, 30, 32, and 115 have been put to the appellant are wholly irrelevant as these questions do not relate to any circumstance appearing in the against the appellant. The learned Additional Sessions Judge was bound to exercise control over the evidence being tendered in his court and to know the scope of the examination of the accused under Section 313 Criminal Procedure Code.[195A-C]

Per Sabyasachi Mukharji, J. (Concurring)

Though the test of proximity cannot and should not be two literally construed and be reduced practically to a cut-and-dried formula of universal application, it must be emphasised that wherever it is extended beyond the immediate, it should be explained and must be done with very great caution and care. As a general proposition it cannot be laid down for all purposes that for instance where the death takes place within a short time of marriage and the distance of time is not spread over three or four months, the statement would be admissible under Section 32 of the evidence Act. This is always not so and cannot be so. In very exceptional circumstances such statements may be admissible and that too not for proving the positive fact, namely raising some doubt about the guilt of the accused [197D-F]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 745 of 1983

From the Judgment and Order dated the 20th, 21st, 22nd, 23rd September 1983 of the Bombay High Court in Criminal Appeal No. 265 of 1983 with confirmation case No. 3/83.

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Ram Jethmalani, M.S. Ganesh, F.N. Ranka and *Ms. Rani Jethmalani* for the Appellant.

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K.G. Bhagat, Addl. Solicitor General, M.N Shroff and *U.A. Jadhavrao* for the Respondent.

The following Judgments were delivered

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FAZAL ALI, J. This is rather an unfortunate case where a marriage arranged and brought about through the intervention of common friends of the families of the bride and bridegroom though made a good start but ran into rough weather soon thereafter. The bride, Manju, entertained high hopes and aspirations and was not only hoping but was anxiously looking forward to a life full of mirth and merriment, mutual love and devotion between the two spouses. She appears to be an extremely emotional and sensitive girl at the very behest cherished ideal dreams to be achieved after her marriage, which was solemnised on February 11, 198' between her and the appellant, Sharad Birdhichand Sarda. Soon after the marriage, Manju left for her new marital home and started residing with the appellant in Takshila apartments at Pune. Unfortunately, however, to her utter dismay and disappointment she found that the treatment of her husband and his parents towards her was cruel and harsh and her cherished dreams seem to have been shatrered to pieces. Despite this shocking state of affairs she did not give in and kept hoping against hope and being of a very noble and magnanimous nature she was always willing to forgive and forget. As days passed by, despite her most laudable attitude she found that "things were not what they seem" and to quote her own words "she was treated in her husbans house as a labourer or as an unpaid maid-servant". She was made to do all sorts of odd jobs and despite her protests to her husband nothing seems to have happened. Even so, Manju had such a soft and gentle frame of mind as never to complain to her parents-in-law, not even to her husband except sometimes. On finding things unbearable, she did protest, and ex

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pressed her feelings in clearest possible terms, in a fit of utter desperation and frustration, that he hated her. Not only this, when she narrated her woeful tale to her sister Anju in the letters written to her (which would be dealt with in a later part of the judgment), she took the abundant care and caution of requesting Anju not to reveal her sad plight to her parents lest they may get extremely upset, worried and distressed. A B

Ultimately, things came to such a pass that Manju was utterly disgusted and disheartend and she thought that a point of no-return had reached. At last, on the fateful morning of June 12, 1982, i.e., nearly four months after her marriage, she was found dead in her bed. C

As to the cause of death, there appears to be a very serious divergence between the prosecution version and the defence case. The positive case of the prosecution was that as the appellant was not at all interested in her and had illicit intimacy with another girl, Ujvala, he practically discarded his wife and when he found things to be unbearable he murdered her between the night of June 11 and 12, 1982, and made a futile attempt to cremate the dead body. Ultimately, the matter was reported to the police. On the other hand, the plea of the defence was that while there was a strong possibility of Manju having been ill-treated and uncared for by her husband or her in-laws, being a highly sensitive and impressionate woman she committed suicide out of sheer depression and frustration arising from an emotional upsurge. This is the dominant issue which falls for decision by this Court. D E

Both the High Court and the trial court rejected the theory of suicide and found that Manju was murdered by her husband by administering her a strong dose of potassium cyanide and relied on the Medical evidence as also that of the chemical examiner to show that it was a case of pure and simple homicide rather than that of suicide as alleged by the defence. The High Court while confirming the judgment of the trial court affirmed the death sentence and hence this appeal by special leave. F G

Before discussing the facts of the case, it may be mentioned that although the High Court and the trial court have gone into meticulous and minutest matters pertaining to the circumstances leading to the alleged murder of Manju, yet after going through the H

judgments we feel that the facts of the case lie within a very narrow compass.

The story of this unfortunate girl starts on 11.2.1982 when her marriage was solemnised with the appellant preceded by a formal betrothal ceremony on 2.8.81. after the marriage, Manju, for the first time, went to her parents' house on 22.2.82 for a very short period and returned to Pune on 26.2.82. It is the prosecution case that on 17.3.82 the appellant had called Manju at Pearl Hotel where he introduced her to Ujvala and told her that she must act according to the dictates and orders of Ujvala, if she wanted to lead a comfortable life with her husband. In other words, the suggestion was that the appellant made it clear to his wife that Ujvala was the real mistress of the house and Manju was there only to obey her orders. After this incident, Manju went to her parents' house on 2.4.82 and returned to Pune on 12.4.82. This was her second visit. The third and perhaps the last visit of Manju to her parents' house was on 25.5.82. from where she returned to Pune on 3.6.82, never to return again. The reason for her return to Pune was that her father-in-law insisted that she should return to Pune because the betrothal ceremony of Shobha (sister of the appellant) was going to be held on 13.6.82.

The last step in this unfortunate drama was that Manju, accompanied by Anuradha (wife of A-2) and her children, returned to the flat on 11.6.82 near about 11.00 p.m. Her husband was not in the apartment at that time but it is alleged by the prosecution that he returned soon after and administered potassium cyanide to Manju. Thereafter, the appellant went to his brother, Rameshwar who was also living in the same flat and brought Dr. Lodha (PW 24) who was living at a distance of 1½ Kms from Takshila Apartments. At the suggestion of Dr. Lodha Dr. Gandhi (PW 25) was also called both and of them found that Manju was dead and her death was an unnatural one and advised the body to be sent for post-mortem in order to determine the cause of death. Ultimately, Mohan Asava (PW 30) was approached on telephone and was informed that Manju had died at 5.30 a.m. Subseqnently, the usual investigation and the post-mortem followed which are not very germane for our purpose at present and would be considered at the appropriate stage.

The plea of the appellant was that Manju was not administered potassium cyanide by him but she appears to have committed

suicide out of sheer frustration. In order to prove his *bona fide* the the accused relied on the circumstances that as soon as he came to know about the death of his wife he called two Doctors (PWs 24 & 25) and when they declared that Manju had died an unnatural death, as the cause of death was not known, and therefore the body had to be sent for post-mortem, he immediately took steps to inform the police. He flatly denied the allegation of the prosecution that there was any attempt on his part to persuade Mohan Asava (PW 30) to allow the body of the deceased to be cremated.

We might state that the High Court has mentioned as many as 17 circumstances in order to prove that the circumstantial evidence produced by the prosecution was complete and conclusive, Some of these circumstances overlap, some are irrelevant and some cannot be taken into considetation because they were not put to the appellant in his statement under s. 313 of the Code of Criminal Procedure in order to explain the effect of the same as we shall presently show.

The law regarding the nature and character of proof of circumstantial evidence has been settled by several authorities of this Court as also of the High Courts, The *locus classicus* of the decision of this Court is the one rendered in the case of *Hanumant* v. *The State of Madhya Pradesh* (1) where Mahajan, J. clearly expounded the various concomitants of the proof of a case based purely on circumstantial evidence, and pointed out thus:

> "The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved·····it must be such as to show that within all human probability the act must have been done by the accused."

This decision was followed and endorsed by this Court in the case of *Dharambir Snigh* v. *The State of Punjab.*(2) we shall however discuss Hanumant's case fully in a later part of our judgment. Coming now to the question of interpretation of sec. 32(1) of The Evidence Act, this Court in the case of *Ratan Gond* v. *State of Bihar*(3) S.K. Das, J. made the following observations:

(1) [1952] SCR 1091.

(2) Criminal Appeal No. 98 of 1958 decided on 4.11.58 printed on green papers in bound volumes.

(3) [1959] SCR 1336.

"The only relevant clause of s. 32 which may be said to have any bearing is cl.(1) which relates to statements 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 the case before us, the statements made made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister."

In the 'Law of Evidence' by Woodroffe & Ameer Ali (Vol. II) the authors have collected all the cases at one place and indicated their conclusions thus:

"To sum up, the test of the relevancy of a statement under Section 32(1), is not what the final finding in the case is but whether the final finding in the case is but whether the cause of the death of the person making the statement comes into question in the case. The expression 'any of the Circumstances of the transaction which resulted in his death'; is wider in scope than the expression 'the cause of his death' ; in other words, Clause (1) of Section 32 refers to two kinds of statements : (1) statement made by a person as to the cause of his death, and (2) the statement made by a person as to any of the circumstances of the transaction which resulted in his death.

The words, 'resulted in his death' do not mean 'caused his death', Thus it is well settled that declarations are admissible only in so far as they point directly to the fact constituting the res gestae of the homicide ; that is to say, to the act of killing and to the circumstances immediately attendant thereon, like threats and difficulties acts, declarations and incidents, which constitute or accompany and explain the fact or transaction in issue.

They are admissible for or against either party, as forming parts of the res gestae."

(P. 952)

It would appear that the solid foundation and the pivotal pillar on wihch rests the edifice of the prosecution may be indicated as follows :—

A

(1) Written dying declaration by the deceased in her letters, two of which were addressed to her sister Anju and one to her friend Vahini,

(2) The oral statements made by the deceased to her father (PW 2), mother (PW 20), Sister (PW 6) and her friend (PW 3) and also to PWs 4 and 5 showing her state of mind shortly before her death and the complaints which she made regarding the ill-treatment by her husband, B

(3) evidence showing that the appellant was last seen with the deceased in the room until the matter was reported to the police. C

(4) the unnatural and incriminating conduct of the appellant, D

(5) the medical evidence taken alongwith the Report of the chemical examiner which demonstrably proves that it was a case of homicide, completely rules out the theory of suicide as alleged by the appellant. E

Mr. Jethmalani, learned counsel for the appellant, has vehemently argued that there was a very strong possibility of the deceased having committed suicide due to the circumstances mentioned in her own letters. He has also questioned the legal admissibility of the statements contained in the written and oral dying declarations. He has submitted that the so-called dying declarations F are admissible neither under s. 32 nor under s. 8 of the Evidence Act. It was submitted by the appellant that the present case is not at all covered by cl.(1) of s. 32 of the Evidence Act.

The leading decision on this question, which has been endorsed by this Court, is the case of *Pakala Narayana Swami* v. *Emperor*[1] G where Lord Atkin has laid down the following tests :

> "It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the "circumstances" can only include the acts done when and H

(1) AIR 1939 PC 47.

A where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible———Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than"res gestae". *Circumstances must have some proximate relation to the actual occurrence.* ————It will be observed that"the circumstances are of the transaction which resulted in the death of the declarant."

These principles were followed and fully endorsed by a decision of this Court in *Shiv Kumar & Ors.* v. *The State of Uttar Pradesh*[1] where the following observations were made :

"It is clear that if the statement of the deceased is to be admissible under this section it must be a statement relating to the circumstances of the transaction resulting in his death. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed,———A necessary condition of admissibility under the section is that the circumstance must have some proximate relation to the actual occurrence———The phrase "circumstances of the transaction" is a phrase that no doubt conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae" (See *Pakala Narayana Swami* v. *The King Emperor* AIR 1939 PC 47).

The aforesaid principles have been followed by a long catena of authorities of almost all the courts which have been noticed in this case. To mention only a few important ones, in *Manoher Lal*

(1) Crl. Appeal No. 55 of 1966 decided on 29- 7- 66 and printed in blue prints of Supreme Court Judgments.

& Ors. v. The *State of Punjab*[1], the Division Bench of the Punjab & Haryana High Court observed thus :

> The torture administered sometimes manifests itself in various forms. To begin with, it might be mental torture and then it may assume the form of physical torture. The physical harm done to the victim might be increased from stage to stage to have the desired effect. The fatal assault might be made after a considerable interval of time, but if the circumstances of the torture appearing in the writings of the deceased come into existence after the initiation of the torture the same would be held to be relevant as laid down in Section 32(1) of the Evidence Act."

We fully agree with the above observations made by the learned Judges. In *Protima Dutta & Anr.* v. *The State*[2] while relying on Hanumant's case (supra) the Calcutta High Court has clearly pointed out the nature and limits of the doctrine of proximity and has observed that in some cases where there is a sustained cruelty, the proximity may extend even to a period of three years. In this connection, the High Court observed thus :

> "The 'transaction' in this case is systematic ill treatment for years since the marriage of Sumana with incitement to end her life. Circumstances of the transaction include evidence of cruelty which produces a state of mind favourable to suicide. Although that would not by itself be sufficient unless there was evidence of incitement to end her life it would be relevant as evidence.
>
> This observation taken as a whole would, in my view, imply that the time factor is not always a criterion in determining whether the piece of evidence is properly included within "circumstances of transaction."——"In that case the allegation was that there was sustained cruelty extending over a period of three years interspersed with exhortation to the victim to end her life." His Lordship further observed and held that the evidence of cruelty was one continuous chain, several links of which were touched up by the exhortations to die. "Thus evidence

(1) 1981 Cr. L.J. 1373.
(2) 81 C.W.N. 713.

A

of cruelty, ill treatment and exhortation to end her life adduced in the case must be held admissible, together with the statement of Nilima (who committed suicide) in that regard which related to the circumstances terminating in
B suicide."

Similarly, in *Onkar* v. *State of Madhya Pradesh*[1] while following the decision of the Privy Council in *Pakala Narayana Swami's* case (supra), the Madhya Pradesh High Court has explained the nature of the circumstances contemplated by s. 32 of the Evidence
C Act thus :

"The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused.——— Thus a statement merely suggesting motive for a crime
D cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive
E for the crime."

In *Allijan Munshi* v. *State*[2], the Bombay High Court has taken a similar view.

In *Chinnavalayan* v. *State of Mad ras*[3] two eminent Judges
F of the Madras High Court while dealing with the connotation of the word 'circumstances' observed thus :

"The special circumstance permitted to transgress the time factor is, for example, a case of prolonged poisoning, while the special circumstance permitted to transgress the
G distance factor is, for example, a case of decoying with intent to murder. This is because the natural meaning of the words, according to their Lordships, do not convey any of the limitations such as (1) that the statement must be made after the transaction has taken place, (2) that the

(1) [1974] Crl. L.J. 1200.
H (2) AIR 1960 Bom. 290.
(3) [1959] M,L.J. 246.

person making it must be at any rate near death, (3) that the circumstances can only include acts done when and where the death was caused. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence."

In *Gokul Chandra Chatterjee* v. *The State*[1] the Calcutta High Court has somewhat diluted the real concept of proximity and observed thus :

> 'In the present case, it cannot be said that statements in the letters have no relation to the cause of death. What drove her to kill herself was undoubtedly her unhappy state of mind, but the statements in my view have not that proximate relation to the actual occurrence as to make them admissible under s. 32(1), Evidence Act. They cannot be said to be circumstances of the transaction which resulted in death."

We, however, do not approve of the observations made by the High Court in view of the clear decision of this Court and that of the privy Council. With due respect, the High Court has not properly interpreted the tenor and the spirit of the ratio laid down by the Privy Council. We are, therefore, of the opinion that this case does not lay down the correct law on the subject.

Before closing this chapter we might state that the Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English law where only the statements which directly relate to the cause of death are admissible. The second part of cl.(1) of s. 32, viz." the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not be found in the English law. This distinction has been clearly pointed out in the case of *Rajindera Kumar* v. *The State*[2] where the following observations were made :

> "Clause (1) of s. 32 of the Indian Evidence Act provides that statements, written or verbal, of relevant facts made by a person who is dead,———are themselves rele-

(1) AIR 1950 Cal. 306.
(2) AIR 1960 Punjab 310.

vant facts 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 case, in which the cause of that person's death comes into question.———It is well settled by now that there is difference between the Indian Rule and the English Rule with regard to the necessity of the declaration having been made under expectation of death.

In the English Law the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under the expectation of death.

And in the case of *State* v. *Kanchan Singh & Anr.*(1) it was observed thus :

"The law in India does not make the admissibility of a dying declaration dependent upon the person's having a consciousness of the approach of death. Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible under s. 32. Evidence Act.

In these circumstances, therefore, it is futile to refer to English cases on the subject.

Thus, from a review of the authorities mentioned above and the clear language of s.32(1) of the Evidence Act, the following propositions emerge :—

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and

(2) AIR 1954 ALL 153.

character of our people, has thought it necessary to widen the sphere of s.32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under s.32.

(3) The second part of cl.1 of s.32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-exmamination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that s.32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of s.32 and, therefore, admissible. The distance of

time alone in such cases would not make the statement irrelevant.

This now brings us to a close consideration of the contents of the letters (Exhs. 30, 32 and 33) written by Manju to her sister and friend. We propose to examine the contents of the letters for four purposes :

1) in order to find out the state of mind and psychological attitude of Manju,

2) the nature of Manju's attitude towards her husband and in-laws,

3) the amount of tension and frustration which seems to be clearly expressed in the letters and

4) to determine Manju's personal traits and psychological approach to life to determine if she was ever capable of or prone to committing suicide.

We start with the letter dated 8.5.82 (Ex. 30) which was addressed to her sister Anju and is printed at page 191 of Part I of the printed Paperbook. The learned counsel for the appellant in order to make our task easy has supplied the English translation as also the Roman script of the original letter. On a comparison of the two versions, we are of the opinion that by and large the English translation printed in the Paperbook is a true and faithful rendering of the contents of the original letter. It is not necessary for us to extract the entire letter but we propose to extract only the relevant portions which seek to explain and illustrate the four purposes mentioned above.

> "All read the letter with curiosity, or it may go to anybody's hand. I do not want to take any risk. So I have taken up today for writing, the second letter to you."
> The Roman scripy runs thus :— (P.191)

> "Khat to sabhi utsukta se padte hain. Kahin kisi ke hath pad saktahai. Aisi risk leni nahin aai. Isliye maine tumhe aaj doosra khat likhneko liya." (P.17)

An analysis of the above clearly shows that Manju was a highly secretive woman and wanted to keep her personal matters or

secrets to herself except giving a rough idea or a passing glimpse of her feelings only to those who were very close to her as friends or near relations. The extract shows that perhaps in a spell of heavy emotions she had written a very long letter to her sister whom she regarded as her best friend but on second thought she tore it off lest it may fall in anybody's hands and she was not prepared to take such a risk. This mentality and noble nature would be of great assistance to us in assessing the probative value of the statements made by her to her parents, sister and friend during her last visit to Beed. The second paragraph, which is extracted below, reflects her state of mind and the tension and torture which she was undergoing :

> "*Now in this letter, when (Out of) the things coming to my mind which cannot be written, I do not understand what is to be written, The State of mind now is very much the same. Enough.* You understand (me). *I am undergoing a very difficult test.* I am unable to achieve it. *Till I could control (myself), well and good. When it becomes impossible, some other way will have to be evolved. Let us see what happens. All right.*" (P.191)

She has hinted that she was passing through difficult times but was trying to control herself as much as she could. She has further indicated that if things did not improve then *she may have to evolve some other method.* The exact words used in the Roman script runs thus :

> "Jab tak sambhal sakti hoon theek hai jab assambhab ho jayega to phir rasta nikalna padega, dekhenge kya kya hota hai," (P.17)

The words "some other way will have to be evolved" clearly gives a clue to her psychotic state of mind and seem to suggest that the other method to get rid of all her troubles was to commit suicide. It is pertinent to note that in the first two paragraphs of her letter extracted above there is no indication nor any hint about the conduct of her husband.

> In the third para of her letter she states her feelings thus :
> "I thought much that since the house of my husband's parents is at Pune, I would do this and that or the people

A from the house of my husband's parents are free. However, I have gradually come to know that in that house, the worth of a daughter-in-law is no more than that of a labourer." (P.191)

B The relevant protion in the Roman script reads thus :

"Is ghar mein bahu ki keemat majdoor se jyada nahin hai." (P.18)

At the end of the third paragraph she repeats her sad plight thus :

C "My state here however is like an unclaimed person. Let it be gone. I do not like to weep (over it). When we will meet, we will talk all the things."

In the middle of the 4th paragraph she comes out with an D emotional outburst by indicating that all her hopes had been shattered and because of being neglected by her husband her health was adversely affected. In the Roman script she used the following words:

E "Sachmuch kya kya sapne rahte hain kuarepanmein, magar toote huye dekhkar dilpar kya gujarti hai. Vaise tu maine kuch bhi sapne nahin dekhe the, bas ek hi sapna tha ki mera pati mujhse bahut pyar kare, magar abhi wo bhi na pakar dilki halat per kaboo nahin pa sak rahi. Tabiyat par uska asar dikh raha hai."

F (P. 19-20)

In the latter part of the 8th paragraph while giving vent to her feelings she states thus:

"Now Manju is moving, it is necessary to tell that she is alive. You don't tell anybody about this letter. I felt G like telling all this to Bhausab. What, however, is the use of making him sorry. One should test one's fate, whatever may be the result. I want to tell you all. But I cannot tell."

The words used by her show her affectionate and secretive nature and the precaution taken by her not to tell any thing to her father, who is addressed as 'Bhausab'. The Roman script of the H relevant portion runs thus:

"Dil tu karta tha Bai Bhau Sahab ko sab bataon, magar unko dukh dekar kya phaida. Apne apne naseeb dekhenge, natija kya nikalta hai. Mujhe tumbein sab kuch batana hai magar bata nahin sakti."

(P.22)

These extracts throw a flood of light on the nature, character, mental attitude, suffering and shock of the deceased. One thing which may be conspicuously noticed is that she was prepared to take all the blame on her rather than incriminate her husband or her in-laws. The other portions of the letter (Ex.30) are not at all germane for the purpose of this case. Summarising the main contents of the letter, the following conclusions or inferences follow:

(a) Manju was a highly emotional and sensitive woman,

(b) She got the shock of her life when due to ill-treatment by her husband and in-laws she found that all her dreams had been shattered to pieces after marriage leaving her a dejected, depressed and disappointed woman,

(c) she had been constantly ill-treated by her in-laws and her position in the house was nothing but that of an unpaid maid-servant or a labourer,

(d) she wanted to keep all her worries and troubles to herself and on no account was she prepared to disclose them to her parents or even to her sister, lest they also get depressed and distressed.

(e) no serious allegation of cruelty had been made against the husband personally by her and she thought that she herself should suffer out of sheer frustration.

Now we shall examine Ex.32 which is a letter dated 8.6.82 written by Manju to her sister Anju. This was perhaps her last letter to Anju and is very important and relevant for decision of the case. The letter begins with the words "*I am happy here.*" In the second paragraph she expresses her feelings as follows:

"Shobhabai's '*Sadi*' *programme is fixed on 13th* I do not know why there is such a dirty atmosphere in the house ? *It is felt every moment that something will happen.*

A Everybody is in tension. *No work has been started in the house. Let it go. I am out of mind. Still I am used not to pay need to it. Ala what about your law.''*

(P.195)

B So far as the first part is concerned, the 'dirty atmosphere' about which she speaks is totally unrelated to anything done by the husband or of any cruel treatment by him; it merely refers to the tension prevailing in the family as the 'Sadi' (Kohl) was fixed on 13.6.82. Her anger is not so much towards her husband or herself as for the manner in which things were being done. She complained that no C work had been started and being the eldest daughter-in law of the family she felt it her duty to see that all arrangements were complete. It was conceded by the Additional Solicitor-General that this portion of the letter does not refer to any ill-treatment by the husband or his parents but relates only to the defective and unsatisfactory arrangements for such an important function. The relevant D portion of the 3rd paragraph is also more or less innocuous but in between the lines it contains a tale of woe, a spirit of desperation and frustration and a wave of pessimism. the actual vernacular words are—

E "Mera to aane ka kya hota hai dekna hai Buajike yahan se khat aur aaya to shahid chance mil sakta hai. Magar meri mangal ke dulhan ke roop mein dekhne ki bahut ichha hai. Dekhenge."

She was naturally apprehending some thing and was not very F hopeful of going to her father's place. This being her last letter, and that too a short one, it gives a clear inkling of the manner of how her mind was working. She did not lay any blame on her husband or anybody else but still she was afraid that something was going to happen and that she may not be able to go to her father and see the marriage of her sister-in-law for which preparations were being G made. In our opinion, these words are extremely prophetic and seem to indicate that by that time she had almost made up her mind to end her life instead of carrying on her miserable existence. As brevity is the soul of wit, she directly hinted that she may not be able to meet her father or any body naturally because when a life comes to an end there can be no such question. Exh. 32, though a short letter, depicts her real feeling and perhaps a tentative decision which she may have already taken but did not want to disclose for H obvious reasons.

Then we come to Exh'33 which is a letter dated 23.4.82 written by the deceased to her close friend, Vahini and which shows her exact feelings, changing, mood and emotions. This is the only letter where she had made clear complaints against her husband and the relevant portions may be extracted thus:

"Really, Vahini, I remember you very much. *Even if I am little uneasy,* I feel that you should have been near with me.

All persons here are very good. Everybody is loving. Still I feel lonely. One reason is that, in the house there are many persons and they are elder to me and such I do not dare to do any work independently. Every time some fear is in mind which leads to confusion.

God knows when I can come there? *The point on which we had discussion is as it was. Vahini. I swear you if you talk to anyone. I am much in pains.* But what else can I do? No other go than that, and the same mistake is done again and again by me. It is that I go ahead and talk for ten times, then I become angry if he does not speak. Vahini, there is nothing in my hands except to weep profusely. At least till now this man has no time to mind his wife, let it be, but Vahini, what shall I do?" (P. 196)

"Who knows what hardships be-fall on me, so long I am alive. Why the god has become (unkind) towards me." (P.197)

"Since yesterday I have made up my mind not to speak a word even, till he speaks (to me). Let me see to what extent I control my feelings. Vahini, you also pray to god for me whether a girl like me should be put to such a difficult test. Vahini, I am so much afraid of him that the romantic enchantment during first 10-15 days after marriage has become like a dream."

"I cannot dare to ask him whether his clothes be taken for wash. At present my status is only that of a maid-servant without pay as of right.

A

Why so much indifference towards me only ? Vahini, I, feel to weep in your arms. Vahini come to Pune early.

On getting up every morning I feel he will speak today but every day I am hoping against hope. Vahini, what will happen ? Now there is no ray of hope.

B

Day before yesterday I became excited and uttered in rage. "You hate me, was I unable to get food in my parent's house ?

G

He was irritated due to word 'hate'. He said. if you talk more like this, I will be very bad man.

If this goes on, I will not come to sleep. That means not permitted (to cry) also. *How he says to me, are you tired of me so early ? What shall I say to such a man. Once I feel that he does not count me. On second thought, I feel he cares me much.* But due to moody nature, it will take time to pacify the same. On the day on which *self-pride is lessened, no other person will be more fortunate than me But till that day it is not certain that I will be alive.*"

D

E

(P. 197)

In the second paragraph she starts by giving an indication that she was feeling uneasy and would have very much liked to have Vahini with her. In the third paragraph she clearly states that all persons in her father-in-laws' place were very good and loving but due to a number of persons in the house she did not get a chance to work independently. The last line "every time some fear is in mind which leads to confusion" is the starting point of the first symptom of her invisible fear which she was unable to locate. The fourth paragraph is rather important which shows that whatever her feelings may have been she sought an oath from Vahini not to talk to anyone regarding the matters which she proposed to write in the said letter. She says that she was much in pains and hints that she weeps profusely and the reason given by her for this is that she went on committing mistakes and talked to her husband many times but his silence was extremely painful which made her angry. In the last portion, for the first time, she makes a direct complaint against her husband to the effect that he had no time to look after her (Manju). In the same paragraph she describes her hardships and complains

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why God was unkind to her. She further expresses her sentiments that the romantic enchantment which she experienced during the first few days of her marriage had completely disappeared and looks like a lost dream or a "Paradise lost". Then she describes her plight as being a maid-servant without pay. She again complains of indifference towards her. Ultimately, she hopes against hope that some day he will speak to her and discuss the problems but there is no response. Later, she refers to a particular incident and goes to the extent of telling him that he hates her. This seems to have irritated the husband who resented this remark very much. Again in the same breath towards the end of the paragraph, while she says that her husband does not care for her yet she at once changes her mind and says that he cares for her much but due to his moody nature it will take time to pacify him. Her feelings again take a sudden turn when she says that when her husband's self-pride is lessened none would be more fortunate than her. The next line is rather important because she hints that till the said heyday comes perhaps she might not be alive.

A careful perusal of this letter reveals the following features—

(1) after going to her marital home she felt completely lost and took even minor things to her heart and on the slightest provocation she became extremely sentimental and sensivtie.

(2) She exhibited mixed feelings of optimism and pessimism at the same time.

(3) it can easily be inferred that she did not have any serious complaint against her husband but she became sad and morose because she was not getting the proper attention which she thought she would get.

(4) There is no indication that she expected any danger from her husband nor is there anything to show that things had come to such a pass that a catastrophe may have resulted. There may be certain concealed and hidden hints which she was not prepared to reveal in writing : what they were is not clear.

(5) A close reading and analysis of the letter clearly shows at least two things—

A (a) that she felt extremely depressed,

(b) that there was a clear tendency resulting from her psychotic nature to end her life or commit suicide.

This possibility is spelt out from the various letters which we B have extracted. Indeed, if this was not so how could it be possible that while not complanning against her husband she gives a hint not only to Vahini but also to Anju that she might not live. She mentions of no such threat having been given to her by husband at any time or anywhere.

C (6) The contents of the letter lead us to the irresistible conclusion that Manju felt herself lonely and desolate and was treated as nothing but a chattel or a necessary evil ever since she entered her marital home.

Thus, from the recitals in the letters we can safely hold that D there was a clear possibility and a tendency on her part to commit suicide due to desperation ond frustration. She seems to be tired of her married life, but she still hoped against hope that things might improve. At any rate, the fact that she may have committed suicide cannot be safely excluded or eliminated. It may be that her husband may have murdered her but when two views are reasonably possible E the benefit must go to the accused. In order to buttress our opinion, we would like to cite some passages of an eminent psychiatrist, Robert J. Kastenbaum where in his book 'Death, Society and Human Experience' he analyses the causes, the circumstances, the moods and emotions which may drive a person to commit suicide. F The learned author has written that a person who is psychotic in nature and suffers from depression and frustration is more prone to commit suicide than any other person. In support of our view, we extract certain passages from his book :

"The fact is that some people who commit suicide can G be classified as psychotic or severly disturbed.

(P.242)

If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider.

(P.243)

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And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness. A

(P.243)

"Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the junglelike struggle. B

(P.243)

The individual does not destroy himself in hope of thereby achieveing a noble postmortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death. C

(P.245)

The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.

(P.245)

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress." E

(P.251)

"People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect. F

XX XX XX

The victim of suicide may also be the victim of self-expectations that have not been fulfilled. The sense of disappointment and frustration may have much in common with that experienced by the person who seeks revenge though suicide ——However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. If something has to go it may be the person himself, not the perhaps excessively high standards by which the judgment has been made—— Warren Breed and his colleagues found that a sense of G H

A failure is prominent among many people who take their own lives."

(P.252)

The above observations are fully applicable to the case of B Manju. She solemnly believed that her holy union with her husband would bring health and happiness to her but unfortunately it seems to have ended in a melancholy marriage which in view of the circumstances detailed above, left her so lonely and created so much of emotional disorder resulting from frustration and pessimism that she was forced to end her life. There can be no doubt that Manju C was not only a sensitive and sentimental woman but was extremely impressionate and the letters show that a constant conflict between her mind and body was going on and unfortunately the circumstances which came into existence hastened her end. People with such a psychotic philosophy or bent of mind always dream of an ideal and if the said ideal fails, the failure drives them to end their life, for D they feel that no charm is left in their life.

Mary K. Hinchliffe, Douglas Hooper and F. John Roberts in their book 'The Melancholy Marriage' observe that—

E "Studies of attempted suicides cases have also revealed the high incidence of marital problems which lie behind the act. In our own study of 100 consecutive cases (Roberts and Hooper 1969), we found that most of them could be understood if the patients interactions with others in their environment were considered."

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(P.5)

Such persons possess a peculiar psychology which instils extreme love and devotion but when they are faced with disappointment or find their environment so unhealthy of unhappy, they seem to G loose all the charms of life. The authors while describing these sentiments observe thus :

"Hopelessness', 'despair', 'lousy, and 'miserable' draw attention to the relationship of the depressed person to his environment. The articulate depressed person will often also struggle to put into words the fact that not only does H there appear to be no way forward and thus no point to

life—but that the world actually looks different." A

(P.7)

Coleridge in 'Ode to Dejection' in his usual ironical manner has very beautifully explained the sentiments of such persons thus : B

"I see them all so excellently fair—

I see, not feel, how beautiful they are ;"

At another place the author (Hinchliffe, Hooper & John) come to the final conclusion that ruptured personal relationship play a major part in the clinical picture and in this connection observed thus : G

> "Initially we applied these ideas to study of cases of attempted suicide (Roberts and Hooper 1969) and although we did not assume that they were all necessarily depressed, we looked for distal and proximal causes for their behaviour and found that *ruptured personal relationships played a major part in the clinical picture.*" D

(P.50) E

The observations of the authors aptly and directly apply to the nature, mood and the circumstances of the unfortunate life of Manju which came to an end within four months of marriage.

We have pointed out these circumstances because the High Court has laid very great stress on the fact that the evidence led by the prosecution wholly and completely excludes the possibility of suicides and the death of Manju was nothing but a dastardly murder. F

We shall now deal with the next limb of the oral dying declaration said to have been made by the deceased to her parents and friends. Some of the statements which have a causal connection with the death of Manju or the circumstances leading to her death are undoubtedly admissible under s.32 of the Evidence Act as held by us but other statements which do not bear any proximity with the death or if at all very remotely and indirectly connected with the death would not be admissible. Unfortunately, however, the two kinds of statements are so inextricably mixed up that it would G H

A take a great effort in locating the part which is admissible and the one which is not.

Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All porsons to whom the B oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at C all. Not that is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against D the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsiously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

E This now takes us to a consideration of the evidence of the witnesses concerned which read together with the letters form a composite chain of evidence regarding the causes or the circumstance relating to the death of the deceased. Accroding to the prosecution, the last visit of Manju to Beed was on 25.5.82 where she stayed till 3rd of June 1982 when she was brought back by the F father of the appellant. In other words, the narration of the troubles and tribulations of Manju was made only during her last visit and not earlier. These statements are alleged to have been made to Rameshwar Chitlange (PW 2), Manju's father, Rekha (PW 3), who was Manju's friend and referred to as 'Vahini' in the letter Ex.33, Anju (PW 6), Manju's sister to whom letters (Exhs. 30 and 32) were G written, and PW-20, Bai, the mother of Manju. Meena Mahajan (PW 5) was also examined but we are not in a position to rely on the evidence of this witness for two reasons -(1) she does not figure anywhere in any of the letters written by Manju, and (2) nothing was told to her by Manju directly but she was merely informed regarding the incidents mentioned by PW-2. This sort of indirect evidence is not worthy of any credence.

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We would first deal with the evidence of PW-2, Rameshwar Chitlange (Manju's father). We shall give a summary of the relevant part of his evidence because the other parts relate to how the marriage was performed and the spouses had gone for honeymoon which are not germane for our purpose. The witness states that when Manju came to Beed with her maternal uncle he found her somewhat uneasy and on making enquiries whether she was happy at her husband's house she told him that she was not *very happy* with her husband since she noticed that her husband was not very much pleased with her and in fact hated her. These facts are the result of the usual domestic quarrels between a husband and a wife, hence this statement cannot be said to be so directly or proximately related to the death of Manju so as to be admissible under s.32 of the Evidence Act.

It appears from his evidence that even after hearing the narration from his daughter he advised her to get herself adjusted to the situation and to the atmosphere of her new marital home. Apart from being inadmissible this does not appear to be of any assistance to the prosecution in proving the case of murder alleged against the appellant. The witness goes on to state that as the grandfather of the accused had died he visited Pune, accompanied by his wife and Manju. Since this was more or less a formal visit for expressing his condolences to the bereaved family, he left Manju at the house of the accused. The only part of his evidence on which reliance was placed by the prosecution is that he had noticed Manju very much disturbed and uneasy and requested Birdichand (father of the accused) to allow him to take Manju to the house of Dhanraj, which he did. On reaching the house of Dhanraj, the witness states that Manju completely broke down and started weeping and fell in the grip of her mother. This state of Manju, which the witness saw with his own eyes, would undoubtedly be primary evidence of what he saw and felt though not in any way connected with s. 32 of the Evidence Act. But from this circumstance alone it cannot be safely inferred that Manju apprehended any serious danger to her life from her husband.

The witness further states that he informed Birdichand about the grievances made to him by Manju. The appellant, Sharad, was sent for and he quietly listened to his father but the witness felt that whatever Birdichand may have told to his son that does not appear to have made any serious impact on him (appellant) and he left the

A room. This is purely an opinion evidence and therefore not admissible. Even so, the accused perhaps did not think it necessary to enter into arguments with his father-in-law in the presence of his father and that is why he may have kept quiet. From this no inference can be drawn that he was in any way inimically disposed towards Manju or was animated by a desire to take her life.

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The witness further stated that he found that Manju was weeping every now and then during the night at Dhanraj's place. Later, in the morning the witness took Manju back to her in-laws house but his grievance was that Sharad did not care to meet or C talk to them. These are however small circumstances which are incidents of any married life and from this no adverse inference can be drawn against the appellant.

Another complaint made in the statement was that when D he made a voluntary offer to solve the difficulties of Sharad, the appellant curtly told him that he did not want to get his difficulties solved by other persons and at this attitude of Sharad the witness was naturally very much disappointed. This conduct of the accused also is not of such an importance as to lead to any adverse inference. Some persons who have a keen sense of E pride and self-respect do not like anyone else not even their father or father-in-law to interfere in their personal matters. Perhaps this may be the reason for the somewhat cool and curt attitude of Sharad but that proves nothing. In fact, experience shows that where elders try to intermeddle in the affairs of a husband and his wife, F this creates a serious obstruction in the relations of the married couple. Nothing therefore, turns upon this statement of PW 2.

Again, the witness repeats that when Manju came down to see him off he noticed her weeping all the time. To cut a long story short, the witness came back to Beed and sent his son Pradeep to G bring Manju from Pune to Beed. On reaching there he was informed that Manju and Sharad had gone on a holiday trip to Mysore, Triupati, etc. After the return of Pradeep to Beed, Dhanraj informed the witness that Sharad and Manju had returned to Pune and therefore, he sent his son, Deepak to Pune to bring back Manju. When Manju arrived at Beed, the witness found her totally disturbed and frightened. This statement would be admissible as primary evidence. What probative value should be attached to this H small matter is a different issue.

Thereafter, the witness was told the incidents by his wife (PW 20) which had been narrated to her by Manju but that is of no value so far as this witness is concerned as the main evinence would be that of PW 20. However, in order to save the marriage from a a total break-down the witness was extremely worried and therefore, he called one Hira Sarda, a close acquaintence of the family of accused, who told him (witness) that he was going to Hyderabad and after 4th-5th June some solution would be found out. At the same time, he advised the witness not to make any haste in sending back Manju to Pune.

On the 2nd of June 1982, Birdichand arrived at Beed and requested the witness to send Manju to Pune because the marriage of Birdichand's daughter was fixed for 30th June 1982 and the Kohl (betrothal) ceremony was to be held on the 13th of June so that Manju may be present at the ceremony and look after the arrangements. The witness says that after hearing this he apprised Birdichand that Manju was extremely frightened and that she was not ready to go back to her husband's house nor was he (witness) willing to send her back so soon. He suggested to Birdichand that as the marriage of his nephew was to be celebrated at Beed on 25th June, Sharad would come to attend the marriage and at that time he can take Manju with him. Birdichand, however, persuaded the witness to send back Manju and assured him that no harm of any kind wonld come to her and he also promised that Manju would be sent back to Beed, The most important statement in the evidence of this witness may be extracted thus :

> "I was having this talk with Birdichand on the first floor of my house. *Manju heard this from the staircase,* called me out in the ground portion of the house and told me that she was not in a position to go to the house of the accused. *Since she was in a state of fear or extreme fear in her mind and she also told me that she was not prepared to go to the house of the accused.*
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> ** ** **
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> Therefore, after the meals I sent Manju with Birdichand. Birdichand, Manju and Kavita then left Beed by about 12.30 p.m. by bus on 3rd of June, 82. At that

A time Manju was constantly weeping right from inside my house till the bus left. She was also in a state of exteme fear."

(P. 197)

B The witness has said many times in his statement that Manju was always weeping and crying and the final crisis came when on hearing the talks between him and Birdichand she called him from the staircase and told him that she was not prepared to go to her husband's house as she was in a state of extreme fear. It is difficult to believe this part of the evidence of the witness for two C reasons—

(1) When the talks were gonig on between two elders would Manju be sitting near the staircase to listen their talks and call her father and give vent to her feelings D and her decision not to go back to Pune at any cost. This conduct appears to be directly opposed not only to the tenor and spirit of the letters (Exhs. 30, 32 and 33) which we have discussed but also against her mental attitude and noble nature.

E (2) As indicated by us while discussing the letters—could a woman who was so affectionate and reserved in nature and who would not like the contents of her letters to Anju and Vahini to be disclosed to her parents lest they feel worried, disturbed and distressed —suddenly turn turtle, forgetting her sentiments not to F worry them and come out in the open to declare before all by weeping and crying that she was in a state of extreme fear, seem to us to be inherently improbable. Once a mature woman develops a particular nature or habit or a special bent of mind she is not likely to forgo her entire nature—in this case, her G affection and love for her parents and the feeling of not doing anything which may cause distress or worry to them, and start telling her woeful story to everyone whom she met.

Manju must have known fully that her husband's sister's H

betrothal ceremony was to be held on 13th June and if her father-in-law was making request after request to take her to Pune to attend the said ceremony, and had given all sorts of assurances that no harm would come to her, would she still call her father and express her state of fear and go on repeating what she had already said. This seems to us to be an afterthought or an embellishment introduced in the evidence of the witness so as to add credence to the prosecution story and provide an imaginary motive for the murder of the deceased. Indeed, if she was bent on resisting all attempts of her father-in-law to take her to Pune she would not have gone at all. On the other hand, her subsequent conduct of ultimately going to Pune and making arrangements for the Kohl ceremony belies the story put forward by the witness. It is extremely difficult for a person to change a particular bent of mind or a trait of human nature unless there are substantial and compelling circumstances to do so. In the instant case, we find no such compelling circumstance even taking the statement of the witness at its face value.

To take the other side of the picture, the witness says that when he reached Pune on 12.6.82 and visited the place where Manju had died, he found Sharad sleeping or lying on the cot and on seeing him he immediately started crying vigorously and making a show of the grief and shock they had received. The exact statement of the witness may be extracted thus :

> "I could notice that Sharad who was sleeping or lying on the cot in the said room on seeing me entering the room immediately started crying vigorously giving jerks to his body and making show of the grief and the shock he had received. Ultimately I asked him as to what had happened to Manju when he told me that since 11th it was the day of his marriage with Manju, he and Manju were in joyest mood. According to him they went to bed by about 12 midnight and he had a sexual act with Manju in such a manner which they never had enjoyed before. Ultimately according to him when they completely felt tired and exhausted both of them fell asleep. According to him by about 5.30 a.m. when he got up and after visiting the urinal, when returned to the room he found that Manju had not got up as usual since according to him, she used to wake up at the same time he used to wake up and so he

went near Manju and called her out when he found her dead."

It is rather strange that while the witness took whatever his daughter told him at its face value without making any further enquiry, he immediately jumped to the conclusion that the grief and tears in the eyes of his son-in-law were fake and that he was merely shedding crocodile tears. There is nothing on the record nor in the evidence to show any circumstance which may have led the witness to arrive at this conclusion. On the other hand, if the conduct of the appellant, as described by the witness, is seen from a dispassionate angle, it was quite spontaneous and natural because by the time the witness reached Pune the post-mortem had been done and the death of Manju had come to light long before his arrival. There was no reason for the witness to have presumed at that time that Sharad must have committed the murder of the deceased. There were no materials or data before him which could have led him to this inference. This clearly shows one important fact, viz., that the witness was extremely prejudiced against Sharad and if one sees anything—even the truth—with a pale glass everything would appear to him to be pale.

The second part of the statement made by the witness regarding having sexual intercourse nearabout midnight seems to us to be inherently improbable. However, educated or advanced one may be, it is against our precious cultural heritage for a person to utter such things in a most frank and rudimentary fashion to his father-in-law. We are clearly of the opinion that the story of having a sexual act, etc., was a pure figment of the imagination of the witness and this, therefore, goes a long way off to detract from the truth of the testimony of this witness.

Furthermore, at page 175 the witness admits that during the life time of Manju, Anju and Rekha told him about the receipt of the letters from Manju but they never referred to the nature or the contents of the letters. This is a correct statement because both Anju and Vahini had been requested by Manju not to disclose to her parents the state of affairs or the tortures which she was suffering and perhaps they kept the sanctity of oath given to them by the deceased. This is an additional circumstance to show that even when Manju visited Beed for the last time she might tell something to her own sister Anju or to Vahini but she would never dare

to disclose all the details and put all the cards on the table before her parents—a step which she deliberately desisted from coming into existence. We can understand the evidence of the witness that Manju was worried, distressed and depressed. Sometimes out of natural love and affection parents make a mountain of a mole hill and this is what seems to have happened in this case.

Great reliance was placed by the Additional Solicitor General, on behalf of the respondent, on the relevance of the statements of PWs 2, 3, 6, and 20. He attempted to use their statements for twin purposes—firstly, as primary evidence of what the witnesses saw with their own eyes and felt the mental agony and the distress through which the deceased was passing. Secondly, he relied on the statements made by the deceased (Mauju) to these witnesses about the treatment meted out to her by her husband during her stay at Pune and furnishes a clear motive for the accused to murder her.

As regards the first circumstance, there can be no doubt that the said evidence of the witnesses would undoubtedly be admissible as revealing the state of mind of the deceesed. This would be primary evidence in the case and, therefore, there cannot be any doubt about the relevancy of the statement of the witnesses in regard to this aspect of the matter. As to what probative value we should attach to such statements would depend on a proper application of the context and evidence of each of the witnesses.

As regards the second aspect—which is in respect of what the deceased told the witnesses—it would only be admissible under s. 32 of the Evidence Act as relating to the circumstances that led to the death of the deceased. In view of the law discussed above and the propositions and the conclusions we have reached, there cannot be any doubt that these statements would fall in the second part of s.32 of the Evidence Act relating directly to the transaction resulting in the death of Manju, and would be admissible. Before, however, examining this aspect of the question we might at the outset state that the character, conduct and the temperament of Manju, as disclosed or evinced by the admitted letters (Exhs. 30,32 and 33), which demonstrate that it is most unlikely, if not impossibe, for Manju to have related in detail the facts which the aforesaid witnesses deposed. If this conclusion is correct, then no reliance can be placed on this part of the statement of the aforesaid witnesses.

We now proceed to discuss the evidence of PWs 3,4, 5, 6 and

A 20. As we have discussed the evidence of PW 2, father of Manju, it will be more appropriate to discuss now the evidence of PW-20 (Manju's mother) from whom most of the matters spoken to by PW-2 were derived. Her evidence appears at page 305 of part I of the Paper Book. It is not necessary for us to go into those details which have already been deposed to by PW-2. The most relevant part of her B evidence is about the visit of Manju to Beed on 2.4.82. She states that during this visit she found Manju cheerful and happy and she did not complain of anything during her stay for 8-10 days. In answer to a question—whether she enquired from Manju or had any talk with her during that period—she stated Manju told her that her husband was C not taking any interest in her and used to leave the house early in the morning and return late at night on the excuse that he was busy with his factory work. It may be stated here that the accused had a chemical factory where he used to work from morning till late at night. The witness further deposed that Manju informed her that there was no charm left for her at the house of her husband. These facts D however run counter to her first statement where she stated that Manju was quite happy and cheerful as expected of a newly married girl. Even so, whatever Manju had said does not appear to be of any consequence because she (the witness) herself admits that she did not take it seriously and told Manju that since she had entered a new family it might take some time for her to acclimatise herself E with the new surroundings. She also warned Manju against attaching much importance to such matters.

Thereafter she goes on to state that near about the 11th or 12th of April 1982 she (PW 20) alongwith her husband left for Pune to offer condolences on the death of the grand-father of F the appellant. She then proceeds to state that during their second visit to Pune on the 11th or 12th of May 1982 she stayed with her brother, Dhanraj and that while she was there Manju hugged at her neck and having lost her control, started weeping profusely. G She further states that Manju requested her to take her to Beed as it was not possible for her to stay in her marital house where she was not only bored but was extremely afraid and scared.

On the next day she (PW 20) met the mother of the appellant and told her plainly that she found Manju extremely perturbed, uneasy and scared and that she was experiencing tremendous pressure and restrictions from her husband. But the mother of H the appellant convinced her that there was nothing to worry about,

and everything will be alright. The witness then narrated the fact to her husband and requested him to take Manju with them to Beed. PW 2 then sought the permission of Birdichand to take Manju to. Beed but he told him that as some guests were to visit him, he (PW 2) can send somebody after 4-5 days to take Manju to Beed. It may be mentioned here that the details about the sufferings and the mental condition of Manju was not mentioned by this witness even to her husband (PW 2) as he he does not say anything about this matter. Further, her statement is frightfully vague.

As already indicated that the letters (Ex. 30, 32, 33) clearly show that Manju never wanted to worry or bother her parents about her disturbed condition, it appears to be most unlikely that on the occasion of the death of her grandfather-in-law she would choose that opportunity to narrate her tale of woe to her mother. This appears to us to be a clear embellishment introduced by the prosecution to give a sentimental colour to the evidence of this witness. Ultimately, on May 25, 1982 Deepak brought Manju to Beed and this time she was accompanied by her cousin, Kavita. Here again, she states that on her arrival she found Manju extremely disturbed and under tension of fear and Manju was prepared to make a clean breast of all her troubles. However, as Kavita was there and did not give any opportunity to Manju to meet her mother alone, she (Kavita) was sent out on some pretext or the other. Thereafter, Manju told her mother that she was receiving a very shabby treatment from her husband and while narrating her miserable plight she told her about two important incidents which had greatly upset her—(1) that she happened to come across a love letter written by PW 37, Ujwala Kothari to her husband which showed that the appellant was carrying on illicit relations with PW 37, (?) that on one occasion the appellant told Manju that he was tired of his life and did not want to live any more and, therefore wanted to commit suicide. Despite Manju's enquiries as to why he wanted to commit suicide, he did not give any reason. She then informed her mother when this talk was going on, she (Manju) herself volunteered to commit suicide. Thereafter, Sharad put forth a proposal under which both of them were to commit suicide and they decided to write notes showing that they were committing suicide. On hearing this plan from Sharad, Manju told him that she was not inclined to commit suicide as she had not lost all hope of life and that she had expressed her desire to commit suicide only because he had said that he would do so. PW 20 would have

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us believe that while in one breath she agreed to the suicide pact yet the next moment she made a complete volte face. This is hard to believe having regard to the nature of the temperament of Manju.

B The two statements said have been made by Manju to her mother appear to be contradictory and irreconciliable and smack of concoction. According to Manju, Sharad then prepared two notes one addressed to his father and another to his father-in-law and asked Manju to do the same but she refused to do anything of the sort. The witness admitted that she was not told as to what C had hnppened to the notes written by the appellant.

All this story of a suicidal pact seems to us nothing but a fairy tale. There is no mention nor even a hint in the letters (Exhs. 30, 32, 33) written by Manju about the aforesaid suicidal pact and the story narrated by the witness before the trial court, nor was the D note produced in the court. This appears to us to be a make-believe story and was introduced to castigate the appellant for his shabby treatment towards Manju.

Another intrinsic circumstance to show the untruth of this statement is that although PW 2 was apprised of these facts yet he E never mentioned them to Birdichand particularly when he was insisting that Manju should be sent back to Pune for attending the betrothal ceremony of his daughter Shobha. Indeed, if this fact, which is of very great importance so far as the lives of both the husband and the wife are concerned, would have been there, the first thing which PW 2 would have done is to tell Birdihand that matters had reach- F ed such a stage as to leave no doubt that her daughter was in an instant fear of death and it was impossible for him to allow his daughter to go to Pune where Sharad was bent on forcing her to commit suicide or even murder her, more particularly because PW 20 admits in her evidence that as all the things she had learnt from Manju were serious, she had informed her husband about the same G who agreed with her.

Apart from this grave incident, the witness deposed to another equally important matter, viz., that on the Shila Septami day, the appellant rang up his mother to send Manju alongwith Shobha to a hotel (Pearl Hotel), as has been deposed to by other witnesses) because he wanted to give a party to his friends. As Shobha was H not present in the house, Manju's mother-in-law sent her alone, in

a rickshaw to the hotel. On reaching the hotel she did not find any other person except a girl who was introduced by her husband as Ujavla Kothari. The most critical part of the incident is that the appellant is alleged to have informed Manju that she should take lessons from Ujvala as to how she should behave with him and also told her that Ujvala knew everything about him and he was completely in her hands. Subsequently the appellant went away and Ujvala told her that the appellant was a short-tempered man and she should talk to him only if and when he wanted to talk to her. She (Ujvala) also told Manju that the appellant was completely under her command and she was getting every bit of information about the incidents happening between the husband and the wife. Finally, she was apprised of the fact by Ujvala that she and Sharad were in love with each other. Manju is said to have retorted and protested to Ujvala by saying that she was not prepared to take any lessons from her regarding her behaviour towards her husband as she (Manju) was his wedded wife while Ujvala was only a friend. Mnaju also told her mother that these facts were narrated by her to the appellant and accused No. 2. As a result of this incident, Manju became a little erratic which attracted double cruelty towards her by her husband and made her extremely scared of her life and in view of this development she requested her mother not to send her back to the house of the accused.

A B C D E

One point of importance which might be noticed here and which shows that whatever be the relations with her husband and Ujvala, the picture presented by the witness is not totally correct because if such a point of no return had already been reached, there was absolutely no question of Birdichand and sending for the appllant and arranging a trip to Ooty, Mysore and other place nor would have Manju agreed to go to these places. The witness further stated that as soon as Manju came to know that Birdichand had come to take her away she was shocked and continuously kept saying that she was extremely afraid of going to her husband's house and that she should not be sent back.

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The behavioural attitude of Manju depicted by the witness seems to us to be absolutely contradictory to and not at all in consonance with her temperament, frame of mind, psychological approach to things and innate habits. That is why no reference had been made even directly or indirecly in any of the letters written by

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A Manju, and she had expressly requested both Anju and Vahini not to disclose anything to her parents lest they may get worried and distressed on her account. In other words, Manju was a woman who despite her troubles and tribulations, sufferings and travails, anxiety and anguish would never have thought of narrating her woeful story to her parents and thereby give an unexpected shock B to them. This feeling is mentioned in the clearest possible terms in the letters (Exhs. 30, 32, 33) which we have already discussed. There is no reference at all in any of the letters regarding suicidal pact or the illicit relationship of her husband with Ujvala.

C Another important fact which the High Court has missed is that even according to the statement of this witness, the appellant had asked his mother to send Shobha along with Manju to the hotel and at that time he could not have been aware that Shobha would not be available. Indeed, if he had an evil intention of insulting or injuring the feelings of Manju by keeping Ujvala there he would D never have asked his mother to send Shobha also because then the matter was likely to be made public. This is another inherent improbability which makes the whole story difficult to believe.

Despite these serious developments both PW 2 and 20 tried to E convince Manju to accept the assurances given by Birdichand that no harm would come to her and if anything might happen they will take proper care. We find if impossible to believe that the parents who had so much love and affection for their daughter would, after knowing the circumstances, still try to take the side of Birdichand and persuade her daughter to go to Pune. Rameshwar (PW 2) should have told Birdichand point-blank that he would not F send Manju in view of the serious incidents that had happend, viz., the suicidal pact, the cruel treatment of the appellant towards Manju, the constant fear of death which Manju was apprehending, the illicit relationship between the appellant and Ujvala, and the strong resistance of his daughter who was not prepared to go Pune at any cost and was weeping and wailing all the time. On the other hand, G knowingly and deliberately they seem to have thrown their beloved daughter into a well of death. The fact that Manju's parents tried to console her and believed the assurance of Birdichand knowing full well the history of the case shows that any statement made by Manju to her parents was not of such great consequence as to harden their attitude. This is yet another intrinsic circumstance Manju H to which negatives the story of suicidal pact and the invitation to

come to the Pearl Hotel and the manner in which she was insulted in the presence of Ujvala. There is no doubt that relations between the appellant and Manju were extremely strained, may-be due to his friendship with Ujvala, she may not have felt happy in her marital home as she has clearly expressed in her letters but she did not disclose anying of such great consequence which would have shocked the parents and led them to resist her going to Pune at any cost. This makes the version given by PWs 2 and 20 unworthy of credence.

We now proceed to take up the evidence of PW-6, Anju, the sister of Manju. The statement of this witness is more or less a carbon copy of the evidence of PW-20 which has been discussed above and, therefore, it is not necessary to consider her evidence in all its details. So far as the first visit is concerned, she fully supports her mother that Manju was very happy as was expected of a newly married girl. When Manju came to Beed around 2nd April 1982 she stayed there for 8-10 days and druring that period the witness noticed that she was somewhat dissatisfied and complained that her husband used to return late at night. She also complained against the callous attitude of the other members of her husband's family. She also introduced the story of Ujvala Kothari and corroborated what PW 20 had said which we have discussed above. She also refers to the said suicidal pact and then to the fact that Birdichand had come to take away Manju to Pune so that she may be able to attend the betrothal ceremony of Shobha. Then she deposes to an incident which appears to be wholly improbable. According to her, on the 3rd of June, 1982, PW 2 invited his two friends, Raju and Rath, for lunch at which Birdichandiwas also present, and told them that Manju was not prepared to go to Pune as she was afraid to go there but Birdichand, alongwith his two friends, assured him that nothing would happen. We do not think that in the course of things P-2 would be so foolish as to let the secret matters of the house known to others than the parties concerned. Thereafter the witness proves the letters (Exhs. 30 and 32).

She stated one important statement to the effect that on some occasions Manju had a talk with her mother in her presence. Although Manju had requested Anju not to disclose anythihg to her parents yet everything was made known to them, During cross-examination the witness was asked—how as it that Manju was narrating these talks when the witness had been asked not to disclose the

same to her parents, which she explained away by saying that she did not ask Manju why she was disclosing these things to her mother. No satisfactory answer to this question seems to have been given by her. At another place, the witness states thus :

> "I did not tell all these informations I received from Manju to any body. Nor anybody enquired from me till my statement was recorded by the Police."

Her evidence, therefore, taken as a whole is subject to the same infirmity as that of PW 20 and must suffer the same fate.

PW-3, Rekha (who was addressed as 'Vahini' in Maju's letter (Ex. 33), states that on the first occasion when Manju came home she was quite happy but during her second visit to Beed in the month of April, 1982 she did not find her so and Manju complained that her husband was avoiding her to have a talk with her on one excuse or another. Manju also informed the witness that the appellant had a girl-friend by name Ujvala and the witness says that she tried to console Manju by saying that since her husband was a Chemical Engineer he may have lot of friends. While referring to Exh. 33 (letter written to her by Manju) she stated that the only complaint made in that letter was that her husband was not talking to her properly. She then deposed to an incident which happened when on her way to Bombay when the witness stayed at Pune for some time. She states that she had a talk with Manju for about half-an-hour when she narrated the story of the suicidal pact. She also stated that she was extremely afraid of the situation and almost broke down in tears and wept.

The most important fact which may be noted in her evidence is a clear pointer to the frame of mind and the psychotic nature of Manju. At page 212 of Part I of the Paperbook while narrating the relationship of her husband with Ujvala she says that the appellant lost his temper and thereupon she spoke the following words to him :

> ,'I am not going to spare this, I will not allow this, his bad relations even though a blot may come to our family and I have decided likewise."

These significant and pregnant words clearly show that Manju was so much bored and disgusted with her life that she entertained a spirit of revenge and told the witness that she was not going to

tolerate this even though a blot may come to the family and that she had decided likewise. This statement undobtedly contains a clear hint that she had almost made up her mind to end her life, come what may and thereby put to trouble her husband and his family members as being suspect after her death. This appears to be a culmination of a f eeling which she had expressed in one of her letters to Anju in the following words:

> "Till I could control (myself), well and good. When it becomes impossible, *some other way will have to be evolved.* Let us see what happens. All right."

Similarly, in her letter (Ex. 33) to this witness she gives a concealed hint "But till that day it is not certain that I will be alive."

Thus the feelings of death and despair which she orally expressed to the witness at Pune seems to have been fulfilled when on the morning of 12th June 1982 she was found dead.

The evidence of PW 4, Hiralal Ramlal Sarda, is not that important. He merely states that in the last week of May 1982, PW 2 had called him and told him that Manju was being ill-treated by her husband and therefore she was not prepared to go to her marital home. PW 2 also informed him about the suicidal pact affair. As the witness was in a hurry to go to Hyderabad he counselled PW 2 not to take any final decision in a hurry and that Manju should not be sent to Pune with Birdichand until his return when a decision may be taken. On return from Hyderabed he learnt that Birdichand had already taken Manju to Pune and therefter he left for Pune. Indeed, if the matter was so grave and serious that a person like PW 4, who was a relation of the appellant rather than that of PW 2, had advised him not to make haste and take a final decision but wait until his return yet PW 2 seems to have spurned his advice and sent Manju to Pune. This shows that the matter was not really of such great importance or urgency as to take the drastic step of making a blunt refusal to Birdihchand about Manju's not going to Pune. This also shows that the story of suicidal pact and other things had been introduced in order to give a clour or orientation to the prosecution story.

Another fact to which this witness deposes in the narration by the appellant about his having sexual act with his wife. We have

already disbelieved this story as being hopelessly improbable and against the cultural heritage of our country or of our nature and habits. This is the only purpose for which this witness was examined and his evidence does not advance the matter any further.

PW-5, Meena Mahajan, has also been examined to boost up the story narrated by PW 2 and other witnesses. She was not at all connected with the family of PW 2 but is alleged to be a friend of Manju and she says that she found Manju completely disheartened and morose and she started weeping and crying while narrating her said story. The witness goes on to state that Manju was so much terrified of the appellant that she was afraid of her life at his hands. No witness has gone to the extent of saying that there was any immediate danger to Manju's life nor did Manju say so to PWs 2, 6 and 20. This witness appears to us to be more loyal than the king. Even assuming that Manju was a friend of PW 6 but she never wrote to her any letter indicating anything of the sort. For these reasons we are not satisfied that this witness is worthy of credence.

A close and careful scrutiny of the evidence of the aforesaid witnesses clearly and conspicuously reveals a story which is quite, different from the one spelt out from the letters (Exhs. 30, 32 and 33). In fact, the letters have a different tale to tell particularly in respect of the following matters:—

(1) There is asolutely no reference to suicidal pact or the circumstances leading to the same,

(2) there is no reference even to Ujvala and her illicit relations with the appellant,

(3) there is no mention of the fact that the deceased was not at all willing to go to Pune and that she was sent by force,

(4) the complaints made in the letters are confined to ill-treatment, loneliness, neglect and anger of the husband but no apprehension has been expressed in any of the letters that the deceased expected imminent danger to her life from her husband.

(5) In fact, in the letters she had asked her sister and friend not to disclose her sad plight to her parents but

while narrating the facts to her parents she herself violated the said emotional promise which appears to us to be too good to be true and an after thought added to strengthen the prosecution case.

(6) If there is anything inherent in the letters it is that because of her miserable existence and gross ill-treatment by her husband, Manju might have herself decided to end her life rather than bother her parents.

We are therefore unable to agree with the High Court and the trial court that the witnesses discussed above are totally dependable so as to exclude the possibility of suicide and that the only irresistible inference that can be drawn from their evidence is that it was the appellant who had murdered the deceased.

Putting all these pieces together a general picture of the whole episode that emerges is that there is a reasonable possibility of Manju having made up her mind to end her life, either due to frustration or desperation or to take a revenge on her husband for shattering her dream and ill-treating her day-to-day.

Apart from the spirit of revenge which may have been working in the mind of Manju, it seems to us that what may have happened is that the sum total and the cumulative effect of the circumstances may have instilled in her an aggressive impulse endangered by frustration of which there is ample evidence both in her letters and her subsequent conduct. In Encyclopedia of Crime and Justice (Vol. 4) by Sanford H. Kadish the author mentions thus :

> "Other psychologically oriented theoriesh ave viewed suicide as a means of handling aggressive impulses engendered by frustration."

Another inference that follows from the evidence of the witness discussed is that the constant fact of wailing and weeping is one of the important symptoms of an intention to commit suicide as mentioned by George W. Brown and Tirril Harris in their book "Social Origins of Depression" thus:—

"*1. Symptom data*

Depressed mood—

1. crying
2. feeling miserable/looking miserable, unable to smile or laugh
3. feelings of hopelessness about the future
4. suicidal thoughts
5. suicidal attempts

Fears/anxiety/worry

15. psychosomatic accompaniments
16. tenseness/anxiety
17. specific worry
18. panic attacks
19. phobias

Thinking

20. feelings of self-depreciation/nihilistic delusions
21. delusions or ideas of reference
22. delusions of persecution/jealousy
23. delusions of grandeur
24. delusions of control/influence
25. other delusions e. g. hypochondriacal worry
26. auditory hallucinations
27. visual hallucinations."

Most of these symptoms appear to have been proved as existing in Manju both from her letters (Exhs. 30, 32 and 33) and from the evidence discussed.

We might hasten to observe here that in cases of women of a sensitive and sentimental nature it has usually been observed that if they are tired of their life due to the action of their kith and kin, they become so desperate that they develop a spirit of revenge and try to destroy those who had made their lives worthless and under this strong spell of revenge sometimes they can go to the extreme limit of committing suicide with a feeling that the subject who is the root cause of their malady is also destroyed. This is what may have happened in this case. Having found her dreams shattered to pieces Manju tried first to do her best for a compromise but the constant ill-treatment and callous attitude of her husband may have driven

her to take revenge by killing herself so that she brings ruination and destruction to the family which was responsible for bringing about her death. We might extract what Robert J. Kastenbaum in his book 'Death, Society, and Human Experience' has to say:

> "Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress."

After a careful consideration and discussion of the evidence we reach the following conclusions on point No. 1:

1) that soon after the marriage the relations between Manju and her husband became extremely strained and went to the extent that no point of return had been almost reached,

2) that it has been proved to some extent that the appellant had some sort of intimacy with Ujvala which embittered the relationship between Manju and him,

3) That the story given out by PW 2 and supported by PW 20 that when they reached Pune after the death of Manju they found appellant's weeping and wailing out of grief as this was merely a pretext for shedding of crocodile tears, cannot be believed,

4) that the story of suicidal pact and the allegation that appellant's illicit relations with Ujvala developed to such an extreme that he was so much infatuated with Ujvala as to form the bedrock of the motive of the murder of Manju, has not been clearly proved,

5) the statement of PW 2 that the appellant had told him that during the night on 11th June 1982 he had sexual act with the deceased is too good to be true and is not believable as it is inherently improbable,

6) that despite the evidence of PWs 2, 3, 6 and 20 if has not been proved to our satisfaction that the matter had assumed such extreme proportions that Manju refused to go to Pune with her father-in-law (Birdichand) at any cost and yet she was driven by use of compulsion and persuasion to accompany him,

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7) that the combined reading and effect of the letters (Exhs. 30, 32 and 33) and the evidence of PWs 2, 3, 4, 6 and 20 clearly reveal that the signs and symptoms resulting from the dirty atmosphere and the hostile surroundings in which Manju was placed is a pointer to the fact that there was a reasonable possibility of her having committed suicide and
B the prosecution has not been able to exclude or eliminate this possibility beyond reasonable doubt.

We must hasten to add that we do not suggest that this was not a case of murder at all but would only go to the extent of holding that at least the possibility of suicide as alleged by the defence
C may be there and cannot be said to be illusory.

8) That a good part of the evidence discussed above, is undoubtedly admissible as held by us but its probative value seems to be precious little in view of the several improbabilities pointed out by us while discussing the
D evidence.

We might mention here that we had to reappreciate the evidence of the witnesses and the circumstances taking into account the psychological aspect of suicide as found in the psychotic nature and character of Manju because these are important facts which the
E High Court completely overlocked. It seems to us that the High Court while appreciating the evidence was greatly influenced by the fact that the evidence furnished by the contents of the letters were not admissible in evidence which, as we have shown, is a wrong view of law,

F We now come to the second limb- perhaps one of the most important limbs of the prosecution case viz. , the circumstance that the appellant was last seen with the deceased before her death. Apparently, if proved, this appears to be a conclusive evidence against the appellant but here also the High Court has completely ignored certain essential details which cast considerable doubt on
G the evidence led by the prosecution on this point.

The question of the appellant having been last seen with the deceased may be divided into three different stages:

1) The arrival of Anuradha and her children alongwith
H Manju at Takshila apartments, followed by the arrival of

the appellant and his entry into his bedroom where Anuradha was talking to Manju,

2) the calling of PW 29 by A-2 followed by the appellant and his brother's going out on a scooter to get Dr. Lodha and thereafter Dr. Gandhi.

3) Sending for Mohan Asava (PW 30) and the conversation between the appellant, Birdichand and others as a result of which the matter was reported to the police.

Although the aforesaid three stages of this circumstance cannot technically be called to mean that the accused was last seen with the deceased but the three parts combined with the first circumstance might constitute a motive for the murder attributed to the appellant.

From a perusal of the judgment of the High Court on these points, it appears that the High Court has made a computeriseandd mathematical approach to the problem in fixing the exact time of the various events which cannot be correct as would appear from the evidence of the witnesses, including Dr Banerjee (PW 33).

The evidence of PW 7, the motor rickshaw driver shows that on the night of the 11th of June he had brought the deceased alongwith Anuradha and others and dropped them near the Takshila apartments at about 11.00 p.m. The witness was cross-examined on several points but we shall accept finding of the High Court on the fact that on the 11th of June 1982 the witness had dropped the persons, mentioned above, at about 11.00 p.m. The rest of the evidence is not germane for the purpose of this case. It may, however, be mentioned that one should always give some room for a difference of a few minutes in the time that a layman-like PW 7 would say. We cannot assume that when the witness stated that he had dropped Manju and others at 11.00 p.m., it was exactly 11.00 p.m.—it would have been 10-15 minutes this way or that way. His evidence is only material to show the approximate time when Manju returned to the apartments.

The next witness on this point is PW-28, K.N. Kadu. This witness corroborates PW-7 and stated he had heard the sound of a rickshaw near the apartments when the wife of A-2, Manju and 3 children entered the apartments and went to their rooms. He

A further says that after about 15 minutes he saw the appellant coming on a scooter and while he was parking his scooter the witness asked him why did he come so late to which he replied that he was busy in some meeting. This would show that the appellant must have arrived at the apartments near about 11.30 or 11.45 p.m. It is very difficult to fix the exact time because the B witness himself says that he had given the timings approximately. The High Court was, therefore, not justified in fixing the time of arrival of Manju and party or the appellant with almost mathematical precision for that would be a most unrealistic approach. The High Court seems to have speculated that Manju must have C died at 12.00 a.m., that is to say, within 15-20 minutes of the arrival of the appellant. It is, however, impossible for us to determine the exact time as to when Manju died because even Dr. Banerjee says in his evidence that the time of death of the deceased was between 18 to 36 hours which takes us to even beyond past 12 in the night. At any rate, this much is certain D that Manju must have died round about to 2.00 a.m. because when Dr. Lodha arrived at 2.45 a.m. he found her dead and he had also stated that *rigor mortis* had started setting in, It is. therefore, difficult to fix the exact time as if every witness had a watch which gave correct and exact time. Such an inference is not at all called for.

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The third stage of this matter is that while the witness was sleeping he heared the sound of the starting of a scooter and got up from his bed and saw appellant and A-2 going away. Therefore, he found 7-8 persons coming and going on their scooters. The High Court seems to suggest that this must have happened by about F 1.30 p.m. Even so, this does not prove that Manju have died at midnight. As the witness had been sleeping and was only aroused by the sound of scooters, it would be difficult to fix the exact time when he saw the appellant and A-2 going out on their scooters. His evidence, therefore, was rightly relied upon by the High Court in G proving the facts stated by him.

PW-29, B.K. Kadu, who was serving as a watchman at the Takshila apartments says that near about the midnight he was called by Rameshwar, A-2 and on hearing the shouts he went to flat No. 5. He further says that A-2 directed him to unbolt or unchain the door but the door was not found closed from inside and hence A-2 H went out and returned after some time. While the witness was

standing at the door A-2 returned and after his return the witness also came back to his house and went to sleep. Perhaps the witness was referring to the incident when A-1 and A-2 had gone on scooter to fetch Dr. Lodha. During cross-examination the witness admitted that he did not possess any watch and gave the timings only approximately. We shall accept his evidence in toto but that leads us nowhere.

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This is all the evidence so far as the first stage of the case is concerned and, in all probability, it does not at all prove that A-1 had murdered the deceased. On the other hand, the circumstances proved by the three witness are not inconsistent with the defence plea that soon after entering the room Manju may have committed suicide.

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Part II of this circumstance relates to the coming of Dr. Lodha and then Dr. Gandhi on the scene of occurrence and we accept their evidence in toto. Dr. Lodha was a family doctor of the appellant's family and it was quite natural to send for him when the appellant suspected that his wife was dead. Although Dr. Lodha (PW 24) was a family doctor of the appellant's family yet he did not try to support the defence case and was frank enough to tell the accused and those who were present there that it was not possible for him to ascertain the cause of death which could only be done by a post-mortem. In other words, he indirectly suggested that Manju's death was an unnatural one, and in order to get a second opinion he advised that Dr. Gandhi (PW 25) may also be summoned. Accordingly, Dr. Gandhi was called and he endorsed the opinion of Dr. Lodha. Such a conduct on the part of the appellant or the persons belonging to his family is wholly inconsistent with the allegation of the prosecution that the appellant had murdered the deceased.

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The High Court seems to have made one important comment-in that why Dr. Lodha and Dr. Gandhi were called from some distance when Dr. Kelkar, who was a skin specialist and another Doctor who was a child expert, were living in the same building. This comment is neither here nor there. It is manifest that Birdichand was a respectable person of the town and when he found that his daughter-in-law had died he would naturally send for his family doctor rather then those who were not known to him.

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A It appears that PW 30 Mohan Asava was also summoned on telephone and when he came at the scene of occurence he found A-2, Birdichand sitting on the floor of the room and Bridichand hugged him out of grief, and told him that Manju had died of shock and the Doctors were not prepared to give a death certificate.

B

In order to understand the evidence of this witness it may be necessary to determine the sequence of events so for as PW 30 is concerned. The witness has stated that while he was sleeping he was aroused from his sleep by a knock at the door by Ram Vilas C Sharda (brother of appellant) at about 4.00 or 4.15 a.m. Ram Vilas told him that Manju had died and the doctors were not prepared to give any death certificate. After having these talks the witness, alongwith Ram Vilas, proceeded to the apartments and remained there till 5.15. a.m. Then he returned to his house, took bath and at about 6.30 a.m. he receivd a telephone call from Ram Vilas for D lodging a report with the police with the request that the time of death should be given as 5.30 a-m. Consequently, he reached the police station near about 7.00 or 7.15 a.m. and lodged a report stating that Manju had died at 5.30 a.m.

This witness appears to be of doubtful antecedents and, E therefore, his evidence has to be taken with a grain of salt. He admitted in his statement at p. 387 that some proceedings about evasion of octroi duty were pending against him in the Court. He also admitted that he was convicted and sentenced to 9 months R.I under the Food Adulteration Act in the year 1973.

F Apart from this it appears that most of the statements which he made in the Court against Birdichand and the other accused, were not made by him before the police. These statements were put to him and he denied the same but they have been proved by the Investigation Officer, PW 40 whose evidence appears at p. 521 of Part II of the printed paperbook. These belated statements made G in the Court may be summarised thus :

While in his statement before the court the witness at p. 386 (para 19) states that the death of Manju was suspicious yet he made no such statement before the police on being confronted by the statement of PW 40. Another important point on which his H statement does not appear to be true is that the dominent fact

mentioned to him by Birdichahd and others was that the doctors were not prepared to issue death certificate but he did not say so before the police. Similarly, he deposed in the court about the statement made to him by Birdichand that he would lose his prestige and therefore the body should be cremated before 7.00 a.m, but he advised him not to do so unless he has informed the police otherwise his whole family would be in trouble. Almost the entire part of his evidence in para 5 at p. 381 appears to be an afterthought, as PW 40 stated thus :

> "I recorded the statement of PW 30 Mohan Asava. He did not state before me that death of Manju was suspicious. He did not state before me that Accused No. 3 informed him that the Doctors were not prepared to issue the death certificate. He did not state before me that the demand was made of the death certificate from the Doctors or the Doctors refused to give the same. During his statement this witness did not make the statements as per para No. 5 excluding the portions from A to F of his examination-in-chief."

The portions referred to as 'A to F' in para No. 5 of examination-in-chief of PW 30 may be extracted thus :

> "Birdichand then started telling me that Manju had died on account of shock and that———he said that she died of heart attack———under any circumstance he wanted to cremate Manju before 7. O' clock———when he said that he would spend any amount but wanted to cremate her before 7.00 a.m."

This statement does not appear to be true for the following reasons .

(a) Birdichand knew full well that PW 30 was a police contact constable and as he was not prepared to persuade the doctors to give a death certificate, his attitude was hardly friendly as he was insisting that the matter should be reported to the police.

It is, therefore, difficult to believe that Birdichand would take such a great risk in laying all his cards on the table knowing full well that the witness was not

A so friendly as he thought and therefore he might inform the police ; thereby he would be in a way digging his own grave.

(b) On a parity of reasoning it would have been most improbable on the part of the appellant, after having B decided to report the matter to the police, to ask PW 30 to report the time of death as 5.30 a.m. knowing full well his attitude when he came to the apartments.

C It is not at all understandable how the witness could have mentioned the time of Manju's death as 5.30 a.m. or, at any rate, when her death was known to her husband and when he himself having gone to the apartments near about 4.15 a.m. knew full well that Manju had died earlier and that Dr. Lodha and Dr. Gandhi had certified the same and advised Birdichand to report D the matter to the police. In the original Ex-120 (in Marathi language), it appears that the time of death given by the witness is 'Pahate' which, according to Molesworth's Marathi-English Dictionary at p. 497, means 'The period of six ghatikab efore s unrise, the dawn' i. e., about 2 hours 24 minutes before sunrise (one ghatika is equal to 24 minutes). This would take us to near about E 3 .00 a.m. Either there is some confusion in the translation of the word 'Pahate' or in the words '5.30 a.m.', as mentioned in the original Ex. 120. However, nothing much turns on this except that according to the witness Manju must have died around 3.00 a.m. which is consistent with the evidence of Dr. Lodha that when he examined Manju at about 2.30 a.m. he found her dead and rigor F mortis had already started setting in.

We are not concerned here with the controversy whether the report was admissible under s. 154 or s. 174 of the Code of Criminal Procedure but the fact remains that the policd did receive the information that the death took place at 5.30 a.m. The High G Court seems to have made a capital out of this small incident and has not made a realistic approach to the problem faced by Birdichand and his family. Being a respectable man of the town, Birdichand did not want to act in a hurry lest his reputation may suffer and tnaturally required some time to reflect and consult his friends before aking any action. The allegation that A-3 told him to report the H time of death as 5.30 a. m. is not at all proved but is based on the

statement of PW 30, before the police. Thus, the approach made by the High Court to this aspect of the matter appears to be artificial and unrealistic as it failed to realise that the question of the time of death of the deceased as 5.30 a. m could never have been given by the appellant or any other accused because they knew full well that the two doctors had exemined the whole matter and given the time of death as being round about 1.30 a. m. Having known all these facts how could anyone ask PW 30 to give the time of death at the police station as 5.30 a. m.

Thus, it will be difficult for us to rely on the evidence of such a witness who had gone to the extent of making wrong statements and trying to appease both Birdichand and the prosecution, and, therefore, his evidence does not inspire any confidence.

The last part of the case on this point is the evidence of PWs 2 and 4, where the appellant is said to have told them that he had sexual intercourse with his wife near about 5.00 a.m. on the 12th June 1982. Apart from the inherent improbability in the statement of the appellant, there is one other circumstance which almost clinches the issue. It appears that Kalghatgi (PW 20), Inspector-in-charge of the police station made a query from Dr. Banerjee which is extracted below :

> Whether it can be said definitely or not as to whether sexual intercourse might have taken just prior to death ?"

The above query was made in Ex. 129 and the answer of the Doctor appears in Ex. 187 which is extracted below :

> "From clinical examination there was no positive evidence of having any recent sexual intercourse just prior to death."

This positive finding of the Doctor therefore knocks the bottom out of the case made out by the prosecution tion that the appellant had told PWs 2 and 4 about having sexual intercourse with his wife. Unfortunately, however, the High Court instead of givlng the benefit of this important circumstance to the accused has given the benefit to the prosecution which is yet another error in the approach made by the High Court while assessing the prosecution evidence. Having regard to the very short margin of time between the arrival of the appellant in his bed-room and the death of Manju, it seems

A to be well-nigh impossible to believe that he would try to have sexual intercourse with her. This circumstance, therefore, falsifies the evidence of PWs 2 and 4 on this point and shows the extent to which the witnesses could go to implicate the appellant.

Finally, in view of the disturbed nature of the state of mind of B Birdichand and the catastrophe faced by him and his family, it is difficult to believe that the grief expressed and the tears shed by the appellant when PW 2 met him could be characterised as fake. If it is assumed that the accused did not commit the murder of the deceased then the weeping and wailing and expressing his grief to PW 2 would be quite natural and not fake.

C

There are other minor details which have been considered by the High Court but they do not appear to us to be very material.

Taking an overall picture on this part of the prosecution case the position seems to be as follows :

D

(1) if the accused wanted to give poison while Manju was wide awake, she would have put up stiffest possible resistance as any other person in her position would have done. Dr. Banerjee in his post-mortem report has not found any mark of violence or resistance. Even E if she was overpowered by the appellant she would have shouted and cried and attracted persons from the neighbouring flats which would have been a great risk having regard to the fact that some of the inmates of the house had come only a short-while before the appellant.

F

(2) Another possibility which cannot be ruled out is that potassium cyanide may have been given to Manju in a glass of water, if she happened to ask for it. But if this was so, she being a chemist herself would have at once suspected some foul play and once her suspicion G would have arisen it would be very difficult for the appellant to murder her.

(3) The third possibility is that as Manju had returned pretty late to the flat she went to sleep even before the arrival of the appellant and then he must have tried to H

forcibly administer the poison by the process of mechanical suffocation, in which case alone the deceased could not have been in a position to offer any resistance. But this opinion of the Doctor has not been accepted by the High Court which, after a very elaborate consideration and discussion of the evidence, the circumstances and the medical authorities, found that the opinion of the Doctor that Manju died by mechanical suffocation has not been proved or, at any rate, it is not safe to rely on such evidence. In this connection, we might refer to the finding of fact arrived at by the High Court on this point :

"In view of the above position as is available from the evidence of Dr. Banerjee and from the observations made by the medical authorities it will not be possible to say that the existence of the dark red blood in the right ventricle exclusively points out the mechanical suffocation particularly when such phenomenon is available in cases of poisoning by potassium cyanide." (PB p. 147-48)

"In view of this answer it will not be possible to say conclusively that this particular symptom of observation is exclusively available in case of mechanical suffocation.

Thus we have discussed all the seven items on which Dr. Banerjee has relied for the purpose of giving an opinion that there was mechanical suffocation. In our view, therefore, those 7 findings would not constitute conclusive date for the purpose of holding that there was mechanical suffocation. As the 7 findings mentioned above can be available even in the case of cyanide poisoning we think that it would not be safe to rely upon these circumstances for recording an affirmative finding that there was mechanical suffocation. As the 7 findings mentioned above can be available even in the case of cyanide poisoning we think that it would not be safe to rely upon these circumstances for recording an affirmative finding that there was mechanical suffocation."

(P. 150-151)

It is not necessary for us to repeat the circumstances relied upon by the High Court because the finding of fact speaks for itself.

A This being the position, the possibillty of mechanical suffocation is completely excluded.

(4) The other possibility that may be thought of is that Manju died a natural death. This also is eliminated in view of the report of the Chemical Examiner as confirB med by the post-mortem that the deceased had died as a result of administration of potassium cyanide.

(5) The only other reasonable possibility that remains is that as the deceased was fed up with the maltreatment G by her husband, in a combined spirit of revenge and hostility after entering the flat she herself took potassium cyanide and lay limp and lifeless. When the apbellant entered the room he must have thought that as she was sleeping she need not be disturbed but when he found that there was no movement in the body D after an hour so, his suspicion was roused and therefore he called his brother from adjacent flat to send for Dr. Lodha.

In these circumstances, it cannot be said that a reasonable E possibility of the deceased having committed suicide, as alleged by the defence, can be safely ruled out or eliminated.

From a review of the circumstances mentioned above, we are of the opinion that the circumstance of the appellant having been last seen with the deceased has not been proved conclusively so as F to raise an irresistible inference that Manju's death was a case of blatant homicide.

This now brings us to an important chapter of the case on which great reliance appears to have been placed by Mr. Jethmalani G on behalf of the appellant. Unfortunately, however, the aspect relating to interpolations in the post-mortem report has been completely glossed over by the High Court which has not attached any importance to the infirmity appearing in the medical evidence in support of the said interpolations. Although the learned counsel for the appellant drew our attention to a number of interpolations in the post-mortem report as also the report sent to the Chemical H Examiner, we are impressed only with two infirmities which merit

serious consideration. To begin with, it has been pointed out that in the original post-mortem notes which were sent to Dr. Banerjee (PW 33) for his opinion, there is a clear interpolation by which the words 'can be a case of suicidal death' appear to have been scored out and Dr. Banerjee explained that since he had written the words 'time since death' twice, therefore, the subsequent writing had been scored out by him. In other words, the Doctor clearly admitted the scoring out of the subsequent portion and we have to examine whether the explanation given by him is correct. In order to decide this issue we have examined for ourselves the original post mortem notes (Ex. 128) where the writing has been admittedly scored out by Dr. Banerjee. The relevant column against which the scoring has been done is column. No. 5 which runs thus :

> "5. Substance of accompanying Report from Police Officer or Magistrate, together with the date of death, if known. Supposed cause of death, or reason for examination."

The last line indicates that the Doctor was to note two things—(1) the date of death, if known, and (2) the suppposed cause of death. This document appears to have been written by PW 33 on 12.6.82 at 4.30 p.m. The relevant portion of the words written by the Doctor are 'time since death' which were repoated as he states in his statement. After these words some other words have been admittedly scored out and his (PW 33) explanation was that since he had written 'time since death' twice, the second line being a repetition was scored out. A bare look at Ex. 128 does not show that the explanation given by the Doctor is correct. We have ourselves examined the said words with the help of a magnifying glass and find that the scored words could not have been 'time since death'. The only word common between the line scored out and the line left intact is 'death'. To us, the scored out words seem to be 'can be a case of suicidal death'. Dr Banerjee however stuck to his original stand which is not supported by his own writing in the document itself. It seems to us that at the first flush when he wrote the post-mortem notes it appeared to him that no abnormality was detected and that it appears to be a case of suicide rather than that of homicide. This, therefore, if the strongest possible circumstance to make the defence highly probable, if not certain. Furthermore, the Doctors's explanation that the scored words were "time since death", according to the said explanation, the scored words ore only three whereas

A the portion scored out contains as many as seven words. Hence the explanation of the Doctor is not borne out from the document.

It is true that the Doctor reserved his opinion until the chemical examiner's report but that does not answer the question because in column No. 5 of post-mortem note Dr. Banerjee has clearly written "can be a case of suicidal death" which indicates B that in the absence of the report of the chemical examiner, he was of the opinion that it could have been a case of suicide. In his evidence, PW 33 stated that in Exh. 128 in column No. 5 the contents scored out read 'time since death' and and since it was repeated in the next line, he scored the words in the second line. Despite C persistent cross-exmination the Doctor appears to have stuck to his stand. It cannot, therefore, be gainsaid that this matter was of vital importance and we expected the High Court to have given serious attention to this aspect which goes in favour of the accused.

Another interpolation pointed out by the learned counsel is D regarding position of tongue as mentioned in Exh. 134. In the original while filling up the said column the Doctor appears to have scored out something; the filled up entry appears thus—'mouth is closed with tip (something scored out) seen caught between the teeth'. But in the carbon copy of the report which was sent to the E Chemical Examiner (Exh. 132) he has added 'caught between the teeth' in ink but in the original there is something else. This is fortified by the fact that the copy of the report actually sent to the chemical examiner does not contain any interpolation against the said column where the filled up entry reads 'Inside mouth'.

F The combined effect of these circumstances show that Dr. Banerjee (PW33) tried to introduce some additional facts regarding the position of the tongue. Perhaps this may be due to his final opinion that the deceased died due to mechanical suffocation which might lead to the tongue being pressed between the teeth. This, however, throws a cloude of doubt on the correctness or otherwise G of the actual reports written by him and the one that was sent to the Chemical Examiner. It is obvious that in the carbon copy which was retained by the Doctor, the entries must have been made after the copy was sent to the Chemical Examiner. However, this circumstance is not of much consequence because the opinion of the Doctor that Manju died by forcible administration of potassium cyanide or H by the process of mechanical suffocation has not been proved.

This aspect need not detain us any further because the High Court has not accepted the case of mechanical suffocation. A

So far as the other findings of Dr. Banerjee are concerned we fully agree with the same. A number of comments were made on behalf of the appellant about Dr. Banerjee's integrity and incorrect reports but subject to what we said, we do not find any substance in those contentions. B

In para 90 of its judgment the High Court has given a number of circumstances which according to it, go to prove the prosecution case showing that the appellant had administered the poison during the night of 11th June, 1982. These circumstances may be extracted thus : C

(1) In the bed-room Manju died of poisoning between 11.30 p. m. and 1. a. m. in the night between 11/12th June, 1982.

(2) Accused No. 1 was present in that bed room since before the death of Manju i. e. since about 11.15 p. m. D

(3) Accused No, 1 did not return to the flat at 1.30 a.m or 1.45 a.m. as alleged.

(4) The conduct of accused No. 1 in not calling for the immediate help of Dr. Shrikant Kelkar and/or Mrs. Anjali Kelkar is inconsistent with his defence that he felt suspicious of the health of Manju when he allegedly returned to the flat at 1.30 a.m. E

(5) In different conduct of accused No. 1 when Dr. Lodha and Dr. Gandhi went to the flat in Takshila apartment, Accused No. 1 did not show any anxiety which one normally finds when the doctor comes to examine the patient. Accused No. 1 should have accompanied the doctors when they examined Manju and should have expressly or by his behaviour disclosed his feelings about the well being of his wife. It was also necessary for him to disclose the alleged fact that he saw Manju in a suspicious condition when he returned at about 1.30 a.m. or so. F G

(6) An attempt of Birdichand to get the cremation of Manju done before 7 a. m. on 12. 6 82 even by spending any amount for that purpose. This conduct though H

A of Birdichand shows the conduct of a person to whom Accused No. 1 had gone and informed as to what had happened.

(7) Delay and false information to police at the hands of Mohan Asava. Though the information is given by B Mohan as per the phone instructions of accused No. 3 it is presumed that accused No. 1 must have told accused No. 3 about the incident and on that basis accused No. 3 gave instructions to Mohan Asava.

(8) Accused No. 1 himself does not take any action either C personally or through somebody else to give correct information to police.

(9) Arrangement of the dead body to make show that Manju died a peaceful and natural death.

(10) Accused No. 1 has a motive to kill Manju as he D wanted to get rid of her to continue relations with Ujvala.

(11) Absence of an anklet on left ankle of Manju is inconsistent with the defence that Manju committed suicide.

E

(12) The conduct of the accused in concealing the anklet in the fold of the Chaddar is a Conduct of a guilty man.

(13) The door of the bedroom was not found bolted from inside. This would have been normally done by Manju F if she had committed suicide.

(14) Potassium cyanide must not have been available to Manju.

(15) Manju was 4 to 6 weeks pregnant. This is a circumstance which would normally dissuade her from commi- G tting suicide.

(16) Denial of the part of accused No. 1 of admitted or proved facts.

(17) Raising a false plea of absence from the bedroom at H the relevant time. (PP. 152—155)

We have already discussed most of the circumstances extracted above and given our opinion, and have also fully explained the effect of circumstances Nos. 1,2,3,4,5 and 6. We might again even at the risk of repetition say that too much reliance seems to have been placed by the High Court on circumstance No. 4 as the appellant did not immediately call for Dr. Shrikant Kelkar (PW 26) and Dr. (Mrs.) Anjali Kelkar (PW 27). In a matter of this magnitude it would be quite natural for the members of the appellant's family to send for their own family doctor who was fully conversant with the ailment of every member of the family. In these circumstances there was nothing wrong if the appellant and his brother went to a distance of 1½ Km. to get Dr. Lodha. Secondly, Dr. Shrikant Kelkar was skin specialist whereas Dr. (Mrs) Anjali Kelkar was a Paediatrician and the appellant may have genuinely believd that as they belonged to different branches, they were not all suitable to deal with such a serious case. The High Court was, therefore, wrong in treating this circumstance as an incriminating conduct of the appellant.

Circumstance No. 5 is purely conjectural because as soon as Dr. Lodha came he examined Manju and advised that Dr. Gandni be called. We fail to understand what was the indifferent conduct of the appellant when he had sent for the two Doctors who examined the deceased. The appellant was in the same room or rather in an adjacent room when the deceased was being examined. From this no inference can be drawn that the appellant was indifferent to the state in which Manju was found.

As regards circumstance No. 6 we have already explained this while dealing with the evidence of Mohan Asava, PW 30. As regards circumstance No. 7, the High Court has presumed that there being no dependable evidence that the infromation given to the police by PW 30 was false and that the appellant must have told A-3 about the incident on the basis of which he gave instructions to PW 30. This is also far from the truth as has been pointed out by us while dealing with the evidence of PW 30.

Circumstance No. 8 is that PW 30 was asked to report the matter to the police. When the dead body was lying in the flat what action could the appellant have taken except reporting the matter to the police through one of his known persons. So far as

A circumstances Nos. 9 and 10 are concerned, they do not appear to us to be of any consequence because, as shown by us, from a reading of the letters (Exhs. 30,32 and 33) and the conduct of the appellant, we do not find any evidence of a clear motive on the part of the appellant to kill Manju.

B Circumstances Nos. 11 and 12 are also of no assistance to the prosecution because whether the anklet was in the chaddar or elsewhere is wholly insignificant and does not affect the issue in question at all. Circumstance No. 13 is also speculative because if the bedroom was not found bolted from inside that would it self not show that Manju could not have committed suicide. Various C persons may react to circumstances in different ways. When Manju entered her bedroom her husband had not come and since she went to sleep she may not have bolted the door frrom inside to enable her husband to enter the room. As regards circumstance No. 14, the High Court has overlooked a very important part of the evidence of PW 2 who has stated at page 178 of part I of the printed paperbook D thus:

> "The plastic factory at Beed is a partnership concern in which two sons of Dhanraj, my wife and sister-in-law, i.e., brother's wife are partners."

E Dr. Modi's Medical Jurisprudence and Texicology (19th Edn.) at page 747 shows that 'Cyanide is also used for making basic chemicals for plastics'. Apart from the fact that the High Court in relying on this circumstance has committed a clear error of record, it is an additional factor to show that cyanide could have been available to F Manju when she visited Beed for the last time and had stayed there for more than a week.

Circumstance No. 15—the fact that Manju was 4 to 6 weeks pregnant would dissuade Manju from committing suicide is also purely speculative. A pregnancy of 4 to 6 weeks is not very serious G and can easily be washed out. Moreover, when a person has decided to end one's life these are matters which do not count at all. On the other hand, this cirumstance may have prompted her to commit suicide for a child was born to her, in view of her ill-treatment by her husband and her in-laws, the child may not get proper upbringing. Any way, we do not want to land ourselves in the field H of surmises and conjectures as the High Court has done.

Circumstance No. 17 is wholly irrelevant because the prosecution cannot derive any strength from a false plea unless it has proved its case with absolute certainty. Circumstance No.17 also is not relevant because there is no question of taking a false plea of absence from the bedroom at the relevant time as there is no clear evidence on this point.

Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4,5,6,8,9,11,12,13,16, and 17. As these circumstances were not put to the appellant in his statement under s.313 of the Criminal Procedure Code they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Fateh Singh Bhagat Singh* v. *State of Madhya Pradesh*(1) this Court held that any circumstance in respect of which an accused was not examined under s. 342 of the Criminal procedure code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under s.342 of the or s.313 of the Criminal Procedure Code, the same cannot be used against him. In *Shamu Balu Chaugule* v. *State of Maharashtra*(2) this Court held thus :

> "The fact that the appellant was said to be absconding not having been put to him under section 342, Criminal Procedure Code, could not be used against him."

To the same effect is another decision of this Court in *Harijan Megha Jesha* v. *State of Gujarat* (3) where the following observation were made :

> "In the first place, he stated that on the personal search of the appellant, a chadi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement

(1) AIR 1953 SC 468
(2) [1976] 1 S.C.C. 438.
(3) AIR 1979 SC 1566.

A under section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant.':

It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decision of this Court. In this view of the matter, the circumstances which were B not put to the appellant in his examination under s.313 of the Criminal Procedure Code have to be completely excluded from consideration.

We might mention here an important argument advanced by counsel for the appellant and countered by the Additional Solicitor C General. It was argued before the High Court that it was highly improbable that if the betrothal ceremony of appellant's sister, which was as important as the marriage itself, was going to be performed on the 13th of June, would the appellant choose a day before that for murdering his wife and thereby bring disgrace and destruction not only to his family but also to her sister. We have already D adverted to this aspect of the matter but it is rather interesting to note how the High Court has tried to rebut this inherent improbability, on the ground that in a case of administration of poison the culprit would just wait for an opportunity to administer the same and once he gets the opportunity he is not expected to think rationally but would commit the murder at once. With due respect E to the Judges of the High Court, we are not able to agree with the somewhat complex line of reasoning which is not supported by the evidence on record. There is clear evidence, led by the prosecution that except for a week or few days of intervals, Manju always used to live with her husband and she had herself complained that he used to come late at night. Hence, as both were living alone in the F same room for the last four months there could be no dearth of any opportunity on the part of the appellant to administer poison if he really wanted to do so. We are unable to follow the logic of the High Court's reasoning that once the appellant got an opportunity he must have clung to it. The evidence further shows that both Manju and appellant had gone for a honeymoon outside Pune and G even at that time he could have murdered her and allowed the case to pass for a natural death. However, these are matters of conjectures.

The Additional Solicitor-General realising the hollowness of the High Court's argument put it in a different way. He submitted H that as the deceased was 4-6 weeks pregnant the appellant realised

that unless the deceased was murdered at the behest it would become very difficult for him to murder her, even if he had got an opportunity, if a child was born and then he would have to maintain the child also which would have affected his illicit connections with Ujvala. This appears to be an attractive argument but on close scrutiny it is untenable. If it was only a question of Manju's being 4-6 weeks pregnant before her death, the appellant could just as well have waited just for another fortnight till the marriage of his sister was over which was fixed for 30th June, 1982 and then either have the pregnancy terminated or killed her. Moreover, it would appear from the evidence of PW 2 (P.176) that in his community the Kohl ceremony is not merely a formal betrothal but a very important ceremony in which all the near relations are called and invited to attend the function and a dinner is hosted. We might extract what PW 2 says about this :

> "At the time of Kohl celebration of Manju, on 2.8.1981 my relatives i.e. my sister from outside had attended this function and many people were invited for this function. A dinner was also hosted by me. In that function the father of the bridegroom is required to spend for the dinner while the presentations made to the bride are required to be given or doned at the expenses of the side of bridegroom This programme is not attended by the bridegroom."
>
> (P.176)

As Birdichand and others were made co-accused in the case they were unable to give evidence on this point but it is the admitted case of both the parties that the accused belonged to the same community as PW 2. In these circumstances, it is difficult to accept the argument that the appellant would commit the murder of his wife just on the eve of Kohl ceremony, which he could have done the same long before that ceremony or after the marriage as there was no hurry nor any such impediment which would deny him any opportunity of murderiny his wife.

We now come to the nature and character of the circumstantial evidence. The law on the subject is well settled for the last 6-7 decades and there have been so many decisions on this point that the principles laid down by courts have become more or less axiomatic.

A The High Court has referred to some decisions of this Court and tried to apply the ratio of those cases to the present case which, as we shall show, are clearly distinguishable. The High Court was greatly impressed by the view taken by some courts, including this Court, that a false defence or a false plea taken by an accused would B be an additional link in the various chain of circumstantial evidence and seems to suggest that since the appellant had taken a false plea that would be conclusive, taken along with other circumstances, to prove the case. We might, however, mention at the outset that this is not what this Court has said. We shall elaborate this aspect of the matter a little later.

C It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this : where various links in a chain are in themselves complete, than a false plea or a false defence D may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

E Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *The State of Madhya Pradesh*.[1] This F case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh*[2] and *Ramgopal* v. *State of Maharashtra*[3]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant's* case (supra) :

G "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the

(1) [1952] SCR 1091.
(2) [1969] 3 SCC 198.
(3) AIR 1972 SC 656.

H

first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstnces should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground far a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

A 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 & Anr.* v. *State of Maharashtra*[1] where the following observations were made :

"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

(1) [1973] 2 SCC 793.

A (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.

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

It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus deliciti, the statement of law as to proof of the D same was laid down by Gresson, J. (and concurred by 3 more Judges) in *The King* v. *Horry*,(1) thus :

> "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for C reasonable doubt : the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

E Lord Goddard slightly modified the expression ,morally certain by 'such circumstances as render the commission of the crime certain'.

This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and F explicit evidence and no person can be convicted on pure moral conviction. *Horry's* case (supra) was approved by this Court in *Anant Chintaman Lagu* v. *The State of Bombay*(2) *Lagu's* case as also the principles enunciated by this Court in *Hanumant's* case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases- G *Tufail's* case (supra), *Ramgopals* case (supra), *Chandrakant Nyalchand Seth* v. *The State of Bombay* (Criminal Appeal No. 120 of 1957 decided on 19.2.58), *Dharambir Singh* v. *The State of Punjab* (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where altough *Hanumant's* case has not

H (1) [1952] N.Z.L.R. 111.
(2) [1960] 2 SCR 460.

been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed* v. *Delhi Administration*[1]. *Mohan Lal Pangasa* v. *State of U.P.*,[2] *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra*[3] and *M.C. Agarwal* v. *State of Maharashtra*[4]—a five-Judge Bench decision.

It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in *Deonandan Mishra v. The State of Bihar*[5], to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus :

> "But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation——such absence of explanation of false explanation would itself be an additional link which completes the chain."

It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

(1) various links in the chain of evidence led by the prosecution have been *satisfactorily proved.*

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

(1) A.I.R. 1974 S.C. 1144/1146.
(2) [1981] 2 S.C.R. 384/390.
(3) [1963] 2 S.C.R. 405/419.
(4) [1955] 2 S.C.R. 570/582.
(5) [1974] 2 S.C.R. 694/696.

A If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in *Shankarlal's* case (supra) where this Court observed thus :

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> "Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

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This Court, therefore, has in no way departed from the five conditions laid down in *Hanumant's* case (supra). Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. D There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of the essential principles laid down in *Hanumant's* case, the High Court cannot supply the weakness or the lacuna by taking aid of or E recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General.

Moreover, in *M.G. Agarwal's* case (supra) this Court while reiterating the principles enunciated in *Hanumant's* case observed thus :

F

> "If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt."

G In *Shankarlal's* (supra) this Court reiterated the same view thus :

> "Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment".

We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled H that where on twthe evidenceossibiliteso pare available or open

one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram* v. *State of Himachal Pradesh*,(1) this Court made the following observations :

> "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by cirucmstantial evidence."

We now come to the mode and manner of proof of cases of murder by administration of poison. In *Ramgopal's* case (supra) this Court held thus :

> "Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question ? (secondly), had the accused the poison in his possession ? and (thirdly), had the accused an apportunity to administer the poison in question to the deceased ? It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death."

So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction :

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased.

(1) [1973] 2 SCC 808.

A In the instant case, while two ingredients have been proved but two have not. In the first place, it has no doubt been proved that Manju died of potassium cyanide and secondly, it has also been proved that there was an opportunity to administer the poison. It has, however, not been proved by any evidence that the appellant had the poison in his possession. On the other hand, as indicated B above, there is clear evidence of PW 2 that potassium cyanide could have been available to Manju from the plastic factory of her mother, but there is no evidence to show that the accused could have procured potassium cyanide from any available source. We might here extract a most unintelligible and extra-ordinary finding of the C High Court—

> "It is true that there is no direct evidence on these two points, because the prosecution is not able to lead evidence that the accused had secured potassium cyanide poison from a particular source. Similarly there is no D direct evidence to prove that he had administered poison to Manju. However, it is not necessary to prove each and every fact by a direct evidence. Circumstantial evidence can be a basis for proving this fact."
>
> (P.160)

E The comment by the High Court appears to be frightfully vague and absolutely unintelligible. While holding in the clearest possible terms that there is no evidence in this case to show that the appellant was in possession or poison, the High Court observes that this fact may be proved either by direct or indirect (circumstantial) evidence. But it fails to indicate the nature of the circumstantial or indirect evidence to show that the appellant was in possession of F poison. If the court seems to suggest that merely because the appellant had the opportunity to administer poison and the same was found in the body of the deceased, it should be presumed that the appellant was in possession of poison, than it has committed a serious and gross error of law and has blatantly violated the principles laid down by this Court. The High Court has not indicat- G ed as to what was the basis for coming to a finding that the accused could have procured the cyanide. On the other hand, in view of the decision in *Ramgopal's* case (supra) failure to prove possession of the cyanide poison with the accused by itself would result in failure of the prosecution to prove its case. We are constrained to observe that the High Court has completely misread and misconstru-

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ed the decision in *Ramgopal's* case. Even prior to *Ramgopol's* case there are two decisions of this Court which have taken the same view. In *Chandrakant Nyalchand Seth's* case (Criminal Appeal No. 120 of 1957 decided on 19.2.58) this Court observed thus :

> "Before a person can be convicted of murder by poisoning, it is necessary to prove that the death of the deceased was caused by poison, that the poison in question was in possession of the accused and that poison was administered by the accused to the deceased. There is no direct evidence in this case that the accused was in possession of Potassium Cyanide or that he administered the same to the deceased."

The facts of the case cited above were very much similar to the present appeal. Here also, the Court found that circumstances afforded a greater motive to the deceased to commit suicide than for the accused to commit murder. This view was reiterated in *Dharambir Singh's case* (Criminal Appeal No. 98 of 1958 decided on 4.11.1958) where the court observed as follows :

> "Therefore, along with the motive, the prosecution has also to establish that the deceased died of a particular poison said to have been administered, that the accused was in possession of that poison and that he had the opportunity to administer the same to the deceased : (see *Mt. Gujrani and another* v. *Emperor*[1] . It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, in a case of circumstantial evidence, that the poison was administered by the accused to the deceased resulting in his death.
>
> We feel that it was not right for the High Court to say, when this link in the chain had failed, that it could not be very difficult for anybody to procure potassium cyanide and therefore the absence of proof of possession of potassium cyanide by the accused was practically of no effect. On the facts as found by the High Court it must be held that the second of the three facts which have to be proved, in case of poisoning based on circumstantial evidence has not been proved, namely that the accused was in possession of the poison that had been found in the body————Can it

(1) AIR [1933] All. 394.

A be said in these circumstances when the proof of a very vital fact namely, that the accused was in possession of potassium cyanide, has failed that the chain of circumstantial evidence, is so far complete as not to leave any reasonable ground for a conclusion consistent with the inncoence B of the accused and that the evidence which remians after the rejection of this fact is such as to show that within all human probability the act must have been done by the accused."

C We are, therefore, clearly of the opinion that the facts of the present appeal are covered by the ratio of the aforesaid decisions. At any rate, taking the worst view of the matter on the evidence in this case two possibilities are clearly open—

D (1) that it may be a case of suicide, or

(2) that it may be a case of murder

and both are equally probable, hence the prosecution case stands disproved.

E We now proceed to deal with some of the judgments of this Court on which great reliance has been placed by the High Court. In the first place, the High Court relied on the case of *Pershadi* v. *State of Uttar Pradesh*[1]. This case appears to be clearly distinguishable because no point of law was involved therein and on the facts proved and the very extraordinary conduct of the accused, the court F held that the circumstantial evidence was consistent only with the guilt of the accused and inconsistent with any other rational exaplantion. Indeed, if this would have been our finding in this particular case, there could be no question that the conviction of the accused would have been upheld.

G The next on which the High Court placed great reliance is case *Lagu's* case (supra). This case also does not appear to be of any assistance to the prosecution. In the first place, the case was decided on the peculiar facts of that case. Secondly, even though the *corpus deliciti* was not held to be proved yet the medical evidence and the conduct of the accused unerringly pointed to the inescapable conclusion that the death of the deceased was as a result of adminis- H tration of poison and that the accused was the person who admini-

(1) AIR [1957] SC 211.

stered the same. This. however, is not the case here. On the other hand, we have held that the conduct of the appellant has not been proved to be inconsistent with his guilt and on this ground alone the present case can be easily distinguished. If at all it is an authority it is on the point that this Court is not required to enter into an elaborate examination of the evidence unless there are very special circumstances to justify the same. At this Court in that case was clearly of the view that the High Court had fully considered the facts and a multitude of circumstances against the accused remained unexplained, the presumption of innocence was destroyed and the High Court was therefore right in affirming the conviction. Of course, Sarkar, J. gave a dissenting judgment. From a detailed scrutiny of the decision cited above (Lagu's Case) we find that there is nothing in common between the peculiar facts of that case and the present one. Hence, this authority is also of no assistance to the prosecution.

Reliance was then placed on the case of *Ram Dass* v. *State of Maharashtra*[1] but we are unable to see how this decision helps the prosecution. The High Court relied on the fact that as the accused had taken the deceased immediately to the Civil Hospital in order to stop the poison from spreading, this particular fact was eloquent enough to speak for the innocence of the accused. A carefull perusal of that decision shows that this Court did not accept the prosecution case despite circumstances appearing in that case which are almost similar to those found in the present one. Moreover, here also the accused had immediately sent for their family Doctor after they had detected that Manju was dead. The reason for a little delay in lodging the FIR has already been explained by us while dealing with the facts. In the decision cited above, it was clearly held that the case against the accused was not proved conclusively and unerringly and that two reasonable views were possible, the relevant portion of which may be extracted thus :

> "On a consideration of the evidence and the circumstances referred to above, we are satisfied that this is a case in which the circumstantial evidence did not prove the case against the accused conclusively and unerringly, and at any rate two reasonable views were possible."

(1) AIR [1977[SC 1164.

A We have already found in the instant case that taking the prosecution at the highest the utmost that can be said is that two views-one in favour of the accused and the other against him-were possible. *Ram Dass's* case also therefore supports the appellant rather than the prosecution.

B The last case relied upon by the High Court is *Shankarlal's* case (supra) but we are unable to see how this case helps the prosecution. The observations on which the High Court has relied upon appears to have been torn from the context. On the other hand, this decision fully supports the case of the appellant that C falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. This decision has already been dealt with by us while considering the merits of the present case and it is not necessary to repeat the same.

D These are the only important cases of this Court on which the High Court seeks to rely and which, on a close examination, do not appear to be either relevant or helpful to the prosecution case in any way. On the other hand, some of the observations made in these cases support the accused rather than the prosecution.

E This now brings us to the fag end of our judgment. After a detailed discussion of the evidence, the circumstances of the case and interpretation of the decisions of this Court the legal and factual position may be summarised thus :

F (1) That the five golden principles enunciated by this Court in *Hanumant's* decision (supra) have not been satisfied in the instant case. As a logical corollary, it follows that it cannot be held that the act of the accused cannot be explained on any other hypothesis except the guilt of the appellant nor can it be said G that in all human probability, the accused had committed the murder of Manju. In other words, the prosecution has not fulfilled the essential requirements of a criminal case which rests purely on circumstantial evidence.

(2) That, at any rate, the evidence clearly shows that two views are possible—one pointing to the guilt of the H accused and the other leading to his innocence. It

may be very likely that the appellant may have administered the poison (potassium cyanide) to Manju but at the same time a fair possibility that she herself commited suicide cannot be safely excluded or eliminated. Hence, on this ground alone the appellant is entitled to the benefit of doubt resulting in his acquittal.

(3) The prosecution has miserably failed to prove one of the most essential ingredients of a case of death caused by administration of poison, i.e., possession of poison with the accused (eiher by direct of circumstantial evidence) and on this ground alone the prosecution must fail.

(4) That in appreciating the evidence, the High Court has clearly misdirected itself on many points, as pointed out by us, and has thus committed a gross error of law:

(5) That the High Court has relied upon decisions of this Court which are either inapplicable or which, on closer examination, do not support the view of the High Court being clearly distinguishable.

(6) That the High Court has taken a completely wrong view of law in holding that even though the prosecution may suffer from serious infirmities it could be reinforced by additional link in the nature of false defence in order to supply the lacuna and has thus committed a fundamental error of law.

(7) That the High Court has not only misappreciated the evidence but has completely overlooked the well established principles of law and in view of our finding it is absolutely clear that the High Court has merely tried to accept the prosecution case based on tenterhooks and slender tits and bits.

(8) We entirely agree with the High Court that it is wholly unsafe to rely on that part of the evidence of Dr. Banerjee (PW 33) which shows that poison was

A forcibly administered by the process of mechanical suffocation.

(9) We also agree with the High Court that there is no manifest defect in the investigation made by the police which appears to be honest and careful. A proof B positive of this fact is that even though Rameshwar Birdichand and other members of his family who had practically no role to play had been arrayed as accused but they had to be aquitted by the High Court for lack of legal evidence.

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(10) That in view of our finding that two views are clearly possible in the present case, the question of defence being false dose not arise and the argument of the High Court that the defence is false does not survive.

D This was a fit case in which the High Court should have given at least the benefit of doubt to the appellant.

Normally, this Court does not interfere with the concurrent findings of fact of the courts below, in the absence of very special circumstances or gross errors of law committed by the High Court. E But where the High Court ignores or overlocks the crying circumstances and proved facts, violates and misapplies the well established principles of criminal jurisprudence or decisions rendered by this Court on appreciation of circumstantial evidence and refuses to give benefit of doubt to the accused despite facts apparent on the F face of the record or on its own findings or tries to gloss over them without giving any reasonable explanation or commits errors of law apparent on the face of the record which results in serious and substantial miscarriage of justice to the accused, it is the duty of this Court to step in and correct the legally erroneous decision of the High Court.

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We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any Court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

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It must be recalled that the well established rule of criminal justice is that 'fouler the crime higher the proof'. In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made.

Manju (from the evidence on the record) appears to be not only a highly sensitive woman who expected whole-hearted love and affection from her husband but having been throughly disappointed out of sheer disgust, frustration and depression she may have chosen to end her life-at least this possibility is clearly gleaned from her letters and mental attitude. She may have been fully justified in entertaining an expectation that after marriage her husband would look after her with affection and regard. This is clearly spelt out in the letters where she hinted that her husband was so busy that he found no time for her. A hard fact of life, which cannot be denied, is that some people in view of their occupation or profession fined very little time to devote to their family. Speaking in a light vein, lawyers, professors, Doctors and perhaps Judges fall within this category and to them Manju's case should be an eye-opener.

For the reasons given above we hold that the prorecution has failed to prove its case against appellant beyond reasonable doubt. We, therefore, allow the appeal, set aside the judgments of the courts below and acquit the appellant, Sharad Bridichand Sarda, of the charges framed against him and direct him to be released and set at liberty forthwith.

VARADARAJAN, J. This appeal by special leave is directed against the judgment of a Division Bench of the Bombay High Court in Criminal Appeal No. 265 of 1983 and Confirmation Case No. 3 of 1983, dismissing the appeal and confirming the sentence of death awarded to the first accused Sharad Birdhichand Sarda (hereinafter referred to as the 'appellant') by the Additional Sessions Judge, Pune in Sessions Case No. 203 of 1982. The appellant, Rameshwar Birdhichand Sarda and Ramvilas Rambagas Sarda were accused 1, 2 and 3 respectively in the Sessions Case.

The appellant and the second accused are the sons of one Birdhichand of Pune whose family has a cloth business. In addition

the appellant who is said to be a graduate in Chemical Engineering had started a chemical factory at Bhosari, a suburb of Pune. The third accused is uncle of the appellant and the second accused. The appellant is the husband of Manjushree alias Manju while the second accused is the husband of Anuradha (P.W.35). Birdhichand's family has its residential house at Ravivar Peth in Pune and owns a flat in a building known as Takshasheela Apartments in Mukund Nagar area of Pune.

Manju, the alleged victim in this case, was the eldest amongst the five children of Rameshwar (P.W.2) and Parwati (P.W.20). Anju (P.W.6) is the second daughter of P.W.2 who is a Commercial Tax and Income Tax Consultant since 1960. P.W.2 is living in his own house situate in Subash Road in Beed city since 1973, prior to which he was living in a rented house in Karimpura Peth in that city. Meena (P.W.5) is a school and college mate and friend of Manju who passed the B.Sc. examination in Chemistry in the First Class in 1980 while P.W.5 who had passed the 10th standard examination together with Manju was still studying in college. Rekha (P.W.3) whom Manju used to call as Vahini is another friend of Manju. She is living with her husband Dr. Dilip Dalvi in a portion of P.W.2's house in Subash Road, Pune as his tenant. P.W.20's elder brother Dhanraj Rathi (P.W.22) is a resident of Pune where he is doing business in the sale of plastic bags for the manufacture of which he has a plastic factory called Deepak Plastics at Beed. It is a partnership concern of P.W.20 and some others including P.W.22's third son Shrigopal. Deepak is one of the two sons of P.Ws. 2 and 20.

After Manju passed her B.Sc. degree examination in 1980 her marriage with the appellant was settled by a formal betrothal ceremony which took place in June 1981. The marriage of the appellant and Manju was performed at the expense of P.W.2 at Beed on 11.2.1982. The appellant and Manju left for Pune on 12.2.1982 after the marriage. Subsequently, P.W.2 sent his elder son Deepak for fetching Manju from the appellant's house at Pune and they accordingly came back to Beed on 22.2.1982. The appellant went to Beed four or five days later and took Manju back to Pune on the next day after pleading his inability to stay in P.W.2's house for some more days. This was Manju's first visit to her parents' house after her marriage with the appellant. She is said to have been very happy during that visit. Thereafter Manju came to her parents' house alongwith her maternal uncle Dhanraj Rathi (P.W.22) on or about

2.4.1982. It is the case of the prosecution that during that visit Manju was uneasy and had generally complained against the appellant to P.Ws.3 and 6. P.W.2 planned to keep Manju in his house for about three weeks on that occasion. But news of the death of the appellant's grand father was received in P.W.2's house in Beed and, therefore, P.Ws. 2 and 20 and Manju went to Pune for condolences on 11.4.1982. After meeting the appellant's father and others at Pune, P.Ws. 2 and 20 returned to Beed leaving Manju in the appellant's house in Pune. That was the second visit of Manju to her parents' house after marriage with the appellant. P.Ws.2 and 20 came to Pune again on or about 13.5.1982. After staying for some time as usual in the house of P.W. 22, P.Ws. 2 and 20 visited the house of Birdhichand on that occasion. It is the case of the prosecution that P.Ws. 2 and 20 found Manju distrubed and uneasy and that they, therefore, took her to the house of P.W. 22 with the permission of Birdhichand. It is also the case of the prosecution that on reaching P.W. 22's house Manju completely broke down and started weeping in the arms of P.W.20. P.Ws. 2 and 20 returned to Beed from Pune and sent their second son Pardeep four or five days later to fetch Manju, who had, however, by then gone with the appellant to Tirupati in Andhra Pradesh. After learning that the appellant and Manju had returned to Pune, P.W.2 sent his son Deepak to fetch Manju to Beed. Accordingly Deepak brought Manju to Beed accompanied by the third accused's daughter Kavita on 25.5.1982. This was Manju's third and last visit to her parents' house after her marriage with the appellant. It is the case of the prosecution that Manju was totally disturbed and frightened during that visit and that she complained to her mother P.W.20 against the appellant and she in turn conveyed to P.W.20 what she heard from Manju. Birdhichand went to Beed on 2.6.1982 without any prior intimation for taking Manju to Pune on the ground that Manju's presence in his family house at pune was necessary for the betrothal ceremony of his daughter Shobha fixed for 13.6.1982 as well as for her marriage fiixed for 30.6.1982. It is the case of the prosecution that when Manju came to know that her father-in-law Birdhichand had come for taking her to Pune she was wept and expressed her unwillingness to go to Pune and that, however, on the assurance of Birdhichand that he would see to it that nothing happened to the life of Manju, P.W.2 permitted Manju to go to Pune alongwith Birdhichand and she accordingly went to Pune on 3.6.1982 alongwith Kavita and Birdhichand.

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A The family of Birdhichand and his sons including the appellant is joint. As stated earlier they have their family's residential house at Ravivar Peth, Pune besides the flat which they owned in the Takshasheela Apartments situate at some distance from their family house. Their flat has two bed-rooms besides a hall and other portions. Birdhichand's two married sons, the appellant and the second accused used to go to the family's flat in the Takshasheela B Apartments for sleeping during the nights. The appellant and Manju used to sleep in one of the two bed-rooms while the second accused and his wife Anuradha (P.W.35) and their children used to sleep in the other bed-room.

Manju had written amongst others, three letters, Ex.33 dated 25.4.1982 to her friend vahini (P.W.3) and Ex. p. 30 dated C 8.2.1982 and p. 32 dated 8.6.1982 to her younger sister Anju (P.W.6). In Ex. 33 Manju has stated *inter alia* that she was feeling lonely though all persons in pune were very good and everybody was loving and that one reason is that there are many elderly persons in the house and, therefore, she does not dare to do any work independently and the fear which is in her D mind every time leads to confusion. She has also stated in that letter though all persone in Pune were very good that she becomes angry if he (appellant) does not speak to her when she goes and talks to him even ten times and that till now this man (appellant) had no time to mind his wife. She has E stated in that letter that she dare not ask him (appellant) whether his clothes be taken for washing and that at present her status is only that of an unpaid maid-servant. She has finally stated in that letter that on the day on which self-pride in the appellant is reduced no other person will be more fortunate than her but it is not certain whether she will be alive until that date. In Ex. 30 F she has stated *inter alia* that she was undergoing a very difficult test and was unable to achieve her object, that it would be well and good only if she controls herself and that some other way will have to be evolved when that becomes impossible. In Ex. 32 she has stated that though she was happy at Pune she does not know why there is such a dirty atmosphere in the house and it is felt G every moment that something will happen. She has also stated in that letter that no work had been started in the house though Shobha's 'sari' function is fixed for 13.6.1982 and, therefore, she is out of her mind.

The case of the prosecution as regards the alleged occurrence during the night of 11/12.6.1982 is thus : on 11-6-1982 at H about 10.30 p.m. Manju accompanied by Anuradha, (P.W. 35) and

three children of the latter came to the Taksheela Apartments by an auto-rickshaw. The night-watchman of the Takshasheela Apartments, kerba (P.W. 28) has deposed about this fact. Syed Mohideen, (P.W. 7) an auto.rickshaw driver residing in the border of Ganesh Peth and Ravivar Peth in Pune claims to have taken two ladies, three children and a baby by his auto-rickshaw at about 11 p.m. on that day to Mukund Nagar. He has identified the photo of Manju published in a newspaper two or three days later as that of one of the two ladies who travelled by his auto-rickshaw as aforesaid. The second accused had already gone to the flat in the Takshasheela Apartments. The appellant reached the flat about 15 minutes later by a scooter, whom the nightwatchman (P.W. 28) remarked that he was coming rather late he told P.W. 28 that it was because he had a meeting. After the appellant reached the flat he and Manju retired to their bed-room while the second accused and P.W. 35 retired to their's. Thereafter the appellant came out of his bed-room at about 2 a.m. on 12.6.1982 and went to the second accused and both of them went out of that flat by scooters soon afterwards. The appellant proceeded to Ravivar Peth and called his father while the second accused went to call Dr. Uttam chand Lodha, (P.W. 24) who lives about one and a half kilo metres awav from the Takshasheela Apartments without seeking the help of Dr. Anjali Kelkar.(P.W. 26) and her husband Dr. Shrikant Kelkar (P.W. 27) who lived close by in the same Takshasheela Apartments. P.W. 24 reached the appellant's flat at about 2.30 a.m. and found Manju dead, with rigor motis having already set in and no external mark showing the cause of death. He, however, opined that it may be a case of unnatural death and suggested that the police may be informed. When Birdhichand who had arrived at the flat by then advised that some other doctor may be called as he was not satisfied with the opinion of P.W- 24, P.W. 24 suggested that Dr. Anil Gandhi, P.W 25 may be called if so desired. Thereafter, P.W. 24 and the third concerned who had come with Birdhichand went to call P.W. 25 who lives about 7 kilo metres away from the Takshasheela Apartments. On their way they contacted P.W. 25 over the phone and took him to the appellant's flat where he examined Manju at about 4 a.m. and pronounced that she was dead. He opined that she might have died three or four hours earlier and stated that there was no external evidence showing the cause of death. He too suggested that the police should be informed to avoid any trouble.

A B C D E F G H

A The third accused went to Mohan Asava, (P.W. 30) at about 4.30 a.m. on 12.6.1982 and called him to the appellant's flat after informing him that Manju was dead. P.W. 30, who accompanied the third accused, saw the body of Manju in the flat and left the place after suggesting that the police should be informed. The B third accused contacted P.W. 30 over the phone at about 6.30 a.m. and asked him to go and inform the police that Manju had died at 5.30 a.m. P.W. 30 accordingly went to Maharishi Nagar Police Station at about 7 or 7.15 a.m. and informed the Head Constable, (P.W. 31) who thereupon made the entry Ex. 120 to the effect that Manju was found to be dead when the appellant tried to wake her C up at 5.30 a.m- on 12.6.1982. P.W. 31 proceeded to the appellant's flat at about 8 a.m. after informing the Inspector of Police, P.W. 40 telephonically about the suspicious death of Manju.

On receipt of information from P.W. 22 by a lightning telephone call at about 6 a.m. on 12.6.1982 that Manju was extermely D serious P.W. 2 went from Beed to Pune alongwith his wife P.W. 20 and his son Pradeep and Hiralal Sarda (P.W. 4) by jeep at about 1 P.m. on 12.6.1982. and learnt that Manju was dead. Thereafter P.W.2 went alongwith Hiralal Sarda to the Sasson Hospital where Manju's body had been sent by the police for autopsy.

E Dr. Kalikrishnan Banerji, P.W. 33 who conducted autopsy on the body of Manju did not find any external or internal injury. He preserved the viscera, small intestines etc. of Manju and reserved his opinion about the cause of her death. On receipt of the the Chemical Examiner's report Ex. 130 to the effect that Manju's viscera contained potassium cyanide poison P.W. 33 finally opined that F Manju had died due to potassium cyanide poisoning and simultaneous mechanical suffocation. After completing the investigation P. W.40 filed the charge-sheet against the appellant and the other two accused on 13.9.1982.

The Additional Sessions Judge, Pune tried the appellant for G offence under Sec. 302 IPC of murder of Manju by administering potassium cyanide poison or by suffocating her or by both, all the three accused for the offence under Sec. 120 B IPC of conspiring to destroy the evidence of the murder of Manju by giving a false report to the police about the time of her death and the third accused for the offence under Sec. 109 read with Sec. 201 IPC and Sec. 201 IPC for intsigating P.W.30 to give false information to the police and giving false information to P.W. 22 regarding the murder H of Manju.

The appellant and the other two accused denied the charges framed against them. The appellant denied that he had anything to do with Ujvala (P.W. 37) with whom is alleged to have been in love at the relevant time. He admitted that Manju and P.W. 35 accompanied by some children went to their flat in the Takshasheela Apartments at about 10.30 p.m. on 11.6.1982 but denied that they travelled by any auto-rickshaw and stated that they went there by their family's car driven by the second accused. He denied that he went to the flat about 15 minutes later and stated that he returned to the flat only at 1.30 or 1.45 a.m. on 12.6 1982 after attending a meeting in the Rajasthan Youth Club. He stated that after changing his clothes he looked at Manju and found something abnormal and became suspicious and then went to the second accused and that there after he went to call his father and uncle while the second accused went to call Dr. Lodha, P.W. 24.

The Trial Court found all the three accused guilty as charged and convicted them accordingly and sentenced the appellant to death under s.302 IPC and all the three accused to rigorous imprisonment for two years and a fine of Rs. 2,000 each under s.120 B IPC but did not award any sentence under s.201 read with s.120B

The appellant and the other two accused filed appeals against their conviction and the sentences awarded to them. The State filed a criminal revision application for enhancement of the sentence awarded to accused 2 and 3. These appeals, confirmation case and criminal revision application were heard together by the Division Bench of the Bombay High Court, which in a lengthy judgment. (195 pages of our paper book) allowed the appellant's appeal in part regarding his conviction and sentence under s.120. B IPC but confirmed his conviction and sentence of death awarded under s 302 IPC and allowed the appeal of accused 2 and 3 in full and acquitted them and dismissed the criminal revision application. Hence, the appellant alone has come up before this Court on special leave against his conviction and the sentence of death.

I had the benefit of reading the judgment of my learned brother Fazal Ali, J. I agree with his final conclusion that the appeal should succeed. The learned Judges of the High Court have relied upon 17 circumstances for confirming the conviction and sentence of death awarded to the appellant. My learned brother Fazal Ali, J. has rightly rejected every one of those circumstances as not conclusively pointing to the guilt of the appellant, including the

A circumstnace that the appellant was last seen with Manju before her death on the ground that the case of the prosecution based on evidence of Dr. Banerji (P.W. 33) that there was any mechanical suffocation of Manju has been disbelived by the High Court itself and that some entries in the carbon copy Ex. 134 of P.W. 33's report sent to the Chemical Examiner had been B scored and interpolated after his report Ex. 132 to the Chemical Examiner had left his hands, that the original entry in the post-mortem certificate Ex. 134 contained the words 'can be a case of suicidal death' and that the explanation of P.W.33. that he wrote the words 'time of death' twice and not the words 'can be a case of suicidal death' and, therefore, he scored off one of them is not C acceptable at all. Doctors P.W.24 and 25 did not find any external injury on the body or Manju which they saw at about 2.30 and 4.30 a.m. on 12.6.1982. Even P.W.33. did not find any external or internal injury on the body of Manju. In these circumstances, unless the prosecution excludes the possibility of Manju having committeds uicide by consuming potassium cyanide poison, asr ightly D pointed out by my learned brother Fazal Ali, J., (no adverse inference of guilt can be drawn against the appellant from the fact that he was last seen with Manju, he being no other than her own husband who is naturally expected to be with her during nights.) Some of these 17 circumstances cannot, by any stretch of imagination, be held to point to the guilt of the appellant. Circumstance No. E 6 is an attempt of the appellant's father Birdhichand to get the body of Manju cremated before 7 a.m. on 12.6.1982 by expressing such a desire to P.W.30. Circumstance No.9 is arrangement of the dead body of Manju to make it appear that she died a peaceful and natural death. Circumstance No. 11 is absence of an anklet of Manju from her leg. Circumstance No. 12 is the conduct of the F appellant in allegedly concealing the anklet in the fold of the chaddar. Circumstance No. 15 is the fact that acccording to the medical evidence Manju was pregnant by four to six weeks and it would normally dissuade her from committing suicide. With respect to the learned judges of the High Court, in my view, by no stretch of imagination, can any of these circumstances be considered G to point to nothing but the guilt of the appellant in a case resting purely on.cicumstantial evidence.

However, since I am unable to persuade myself to agree with my learned brother Fazal Ali, J. on four points, I am writing this separate but concurring judgment, giving my view on those points, H namely, (1) ill-treatment of Manju by the appellant, (2) intimacy of

the appellant with Ujvala (P.W.37), (3) admissibility of Manju's letters Exs. 30,32 and 33 and the oral evidence of P.Ws. 2,3,5,6 and 20 about the alleged complaints made by Manju against the appellant under s. 32 (1) of the Evidence Act and (4) conduct of Dr. Banerji (P.W.33) who had conducted autopsy on the body of Manju. A B

My learned brother Fazal Ali, J. has observed as follows at pages 3 and 96 of his judgment :

> "On the other hand the plea of the defence was that while there was a strong possibility of Manju having been ill-treated and uncared for by her husband and her in-laws, being a highly sensitive and impressionate woman, she committed suicide out of sheer depression and frustration arising from an emotional upsurge." (P-3) C

> "On the other hand this circumstance may have prompted her to commit suicide, for if a child was born to her, in view of her ill-treatment by her husband and her in-laws the child may not get proper upbringing". (P.96) D

I do not recollect any admission by Mr. Ram Jethmalani, learned counsel for the appellant in the course of his arguments about any cruelty or ill-treatment to Manju on the part of the appellant or his parents. The evidence of P.W.3 is that during Manju's second visit to Beed after her marriage with the appellant she found Manju not quite happy and very much afraid of the appellant. The evidence of P.W.5 is that during Manju's second visit to Beed, Manju complained to her about the appellant returning home late in the night and avioding to have a talk with her and that Manju told her that she was afraid of the appellant and apprehended danger to her life at his hands. The further evidence of the P.W.5 is that during her third visit to Beed she inferred from Manju's face a spell of fear. The evidence of P.W.6 is that during Manju's second visit to Beed, Manju told her that the appellant used to leave the house early in the morning and return late at night under the pretext of work in his factory and that he was even reluctant to talk with her. P.W.6 has stated that during Manju's third visit to Beed she was extemely uneasy. disturbed and under a spell of fear, that Manju told her the appellant did not relish even her question as to why he was not prepared to have a simple talk with her, and that E F G H

during her third visit to Beed, Manju expressed her unwillingness to go to Pune when Birdhichand went to Beed on 2.6.1982 for taking her to Pune. To the same effect is the evidence of P,Ws. 2 and 20 about how Manju looked in spirit and what she stated during her last two visits. My learned brother Fazal Ali, J. has rightly rejected the oral evidence of P.Ws. 2, 3, 5, 6 and 20. He has extracted the relevant portions of the letters Exs. 30, 32 and 33 in his judgment and has observed at page 23 that one thing which may be conspicuously noticed in Ex. 30 is that Manju was prepared to take all the blame on hereself rather than incriminating her husband or his parents : at page 24 that it was conceded by the learned Additional Solicitor General that the relevant protion of Ex.32 does not refer to any ill-treatment of Manju by the appellant or his parents ; and at page 30 that it can be easily inferred from Ex. 33 that Manju did not have any serious complaint against the appellant except that she was not getting proper attention which she deserved from him. These three letters do not establish that Manju made any complaint of any ill-treatment by the appellant or his parents. In my view, these three letters and the aforesaid oral evidence of P.Ws. 2, 3, 5, 6 and 20 are inadmissible in evidence under s. 32(1) of the Evidence Act for reasons to be given elsewhere in my judgment. Thus there is no acceptable evidence on record to show that either the appellant or his parents ill-treated Manju. The High Court also has not found any such ill-treatment in its judgment. On the other hand, what has been found by the High Court in para 104 of its judgment is that the appellant treated Manju contemptuously. Even while setting out the case of the prosecution the High Court has stated in para 7 of its judgment that it is alleged that the appellant started giving contemptuous treatment to Manju and in para 20 that the appellant has denied in his statement recorded under s.313 Cr.P,C. that Manju was being treated contemptuously. No question has been put to the appellant in the course of his examination under s.313 Cr.P.C. about any ill-treatment of Manju by the appellant or his parents. My learned brother Fazal Ali, J. has referred in pages 97 and 98 of his judgment to this Court's decisions in *Fateh Singh Bhagat Singh* v. *State of Madhya Pradesh*,[1] *Shamu Babu Chaugale* v. *State of Maharashtra*[2] and *Harijan Megha Jesha* v. *State of Gujarat*[3] and has observed at page 98 of his judgment that circumstance not put to the appellant in his examination under s. 313 Cr.PC. have to be completely excluded from consideration in view of those decisions. Therefore, since

(1) AIR 1953 SC 468.
(2) [1976] 1 SCC 438.
(3) AIR 1979 SC 1566.

no question has been put to the appellant in this regard in the course of his examination under s.313 Cr.P.C.. even if there is any evidence about any ill-treatment of Manju by the appellant or his parents it has to be completly excluded from consideration. I felt it necessary to say this in my judgment since I think that in fairness to the appellant it has to be done.

My learned brother Fazal Ali, J. has set out the case of the prosecution in so far as it connects P,W. 37 with the appellant at page 3 of his judgment where he has stated that the positive case of the prosecution is that the appellant was not at all interested in Manju and had illicit intimacy with P.W.37. On this point there is the evidence of P.Ws. 3, 5 and 6. The evidence of P.W.3 is that during her second visit to Beed, Manju informed her that the appellant had a girl-friend by name Ujwala Kothari and that he introduced her (Ujvala Kothari) to her and told her that she should learn from Ujvala Kothari about how she should behave with him. The evidence of P.W.5. is that during her second visit to Beed, Manju told her that the appellant had an affair with a girl by name Ujvala Kothari and that she had seen Ujvala's latter addreassed to the appellant and an incomplete letter of the appellant addressed to that girl. No such letters have been produced in evidence. The evidence of P.W.6 is that during her second visit to Beed, Manju told her that the appellant had an affair wsth a girial by name Ujvala Kothari and also introduced that girl to her in the Pearl Hotel saying that she has complete command over him and that she (Manju) should take lessons from her (Ujvala Kothari) about how she should behave with him. There is no other evidence regarding this alleged illicit intimacy between the appellant and P.W.37. This alleged illicit intimacy is totally denied not only by the appellant but also by P,W.37. The alleged incident in the Pearl Hotel, according to the case of the prosecution, took place on 17.3.1982. But there is no reference whatever to any such incident in any of the subsequent three letters of Manju, Exs. 30, 32 and 33, dated 25.4.1982, 8.5.1982 and 8.6.1982 respectively. My learned brother Fazal Ali, J. has rightly rejected the oral evidence not only of P.Ws. 3, 5 and 6 but also of P.Ws.2 and 20 as untrustworthy at page 65 of his judgment. However, at page 68 he has stated that it has been proved to some extent that the appellant had some sort of intimacy with Ujvala Kothari and it had embittered the relationship between the appellant and Manju. In my view, as already stated, the oral evidence of P.Ws. 2, 3, 5, 6 and 20 about what Manju is alleged to have told them against the appellant and or his

family, and even her letters Exs. 30, 32 and 33 are inadmissible in evidence under s.32(1) of the Evidence Act. Thus, there is absolutely no reliable or admissible evidence on record to show that the appellant had any intimacy with Ujwala (P.W.37). I am, therefore, unable to share the view of my learned brother Fazal Ali, J. that the prosecution has proved to some extent that the appellant had some sort of intimacy with P.W.37 and it had embittered the relationship between the appellant and Manju. I think that I am bound to say this in fairness to not only the appellant but also P.W.37 who, on the date of her examination in the Court, was a 19 years old student and has stated in her evidence that she had known the appellant only as the President of the Rajasthan Youth Club in the year 1979 when she was a member of that Club for about 5 or 6 months in that year.

My learned brother Fazal Ali, J. has referred to the oral evidence of P.Ws. 2, 3, 5, 6 and 20 about Manju's alleged complaint against the appellant and or his parents and also to the contents of Manju's letters, Exs. 30, 32 and 33. I have mentioned above the gist of that oral evidence and those three letters. My learned brother has held the said oral evidence and those three latters to be admissible under s.32(1) of the Evidence Act while rejecting the oral evidence to those five witnesses as untrustworthy at pages 64 and 65 of his judgment, mainly on the ground that the oral evidence is quite inconsistent with the spirit and contents of those letters. He appears of have relied upon those three letters for two purposes, namely, rejecting the oral evidence of those five witnesses as untrustworthy and supporting the defence verison that it may be a case of suicidal death. In my opinion the oral evidence of those five witnesses about what Manju is alleged to have told them against the appellant and or his parents and the three letters, are inadmissible under s. 32(1) of the Evidence Act, which reads thus :

> "32. 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 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 resulated in his death, in cases in which the cause of that person's death comes into question". A

The alleged oral statements of Manju to P,Ws. 2, 3, 5, 6 and 20 are said to have been made during her second and third visits to Beed in the end of February 1982 and end of May 1982 respectively before her death during the night of 11/12.6.1982. She had written the letters, Exs. 33, 30 and 32 on 25.4.1982, 8.5.1982 and 8.6.1982 as stated earlier. The oral evidence of these witnesses and these three letters are not as to the cause of Manju's death or as to any of the circumstances of the transaction which resulted in her death during that night. The position of law relating to the admissibility of evidence under s. 32(1) is well settled. It is, therefore, not necessary to refer in detail to the decisions of this Court or of the Privy Council or our High Courts. It would suffice to extract what the learned authors Woodroffe and Amir Ali have stated in their Law of Evidence, fourteenth edition and Ratanlal and Dhirajlal in their Law of Evidence (1982) reprint). Those propositions are based mostly on decisions of courts for which reference has been given at the end. They are these : B C D

Woodroffe & Amir Ali's Law of Evidence, fourtheenth edition.
Page—937 E

,'Hearsay is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the test applied to admissible evidence, namely, the oath and cross-examination. But where there are special circumstances which give a guarantee of trustworthiness to the testimony, it is admitted even though it comes from a second-hand source". F

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"What is relevant and admissible under caluse (1) of this section (Section-32) is the statements actually made by the deceased as to the cause of his death or of the circumstances of the transaction which resulted in his death", G

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"A statement must be as to the cause of the declarant's death or as to any of the circumstances of the transaction which resulted in his death i.e. the cause and circumstances of the death and not previous or subsequent transaction,

such independent transactions being excluded as not falling within the principle of necessary on which such evidence is received. When a person is not proved to have died as a result of injuries received in the incident in question, his statement cannot be said to be a statement as to the cause of his death or as to any of the circumstances which resulted in his death. (AIR 1964 SC 900). Where there is nothing to show that the injury to which a statement in the dying declaration relates was the cause of the injured person's death or that the circumstances under which it was received resulted in his death, the statement is not admissible under this clause". (AIR 25 Bombay 45).

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"Circumstances of the transaction resulting in his death ; This clause refers to two kinds of statements : (i) when the statement is made by a person as to the cause of his death or (ii) when the statement is made by a person as to any of the circumstances of the transaction which resulted in his death. The words 'resulted in his death' do not mean 'caused his death'. The expression 'any of the circumstances of the transaction which resulted in his death' is wider in scope than the expression 'the cause of his death. The declarant need not actually have been apprehending death." (AIR 1964 M.P. 30).

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"The expression 'circumstances of the transaction' occurring in s.32, clause (1) has been a source of perplexity to Courts faced with the question as to what matters are admissible within the meaning of the expression. The decision of their Lordships of the Privy Council in *Pakala Narayanaswami* v. *Emperor* (LR 66 IA 66) sets the limits of the matters that could legitimately be brought within the purview of that expression. Lord Atkin, who delivered the judgment of the Board, has, however, made it abundantly clear that, except in special circumstances no circumstance could be a circumstance of the transaction if it is not confined to either the time actually occupied by the transaction resulting in death or the sense in which the actual transaction resulting in death took place. The special circumstance permitted to transgress the time factor is, for example, a case of prolonged poisoning, while the special circumstance

permitted to transgress the distance factor is, for example, a case of decoying with intent to murder. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence."

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"Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes the evidence of all relevant factors. It is on the other hand narrower than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence, though, as for instance, in the case of prolonged poisoning they may be related to dates at a considerable distance from the date of actual fatal dose".

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"The Supreme Court in the case of *Shiv Kumer* v. *State of U.P.* (1966 Criminal Appeal R. (SC) 281) has made similar observations that the circumstances must have some proximate, relation to the actual occurrence. and that general expressions indicating fear or suspicion, whether of a particular individual or otherwise and not directly to the occasion of death will not be admissible".

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"The clause does not permit the reception in evidence of all such statement of a dead person as may relate to matters having a bearing howsoever remote on the cause or the circumstances of his death. It is confined to only such statements as relate to matters so closely connected with the events which resulted in his death that may be said to relate to circumstances of the transaction which resulted in his death. (LR 66 1A 66). 'Circumstances of the transaction which resulted in his death' means only such facts or series or facts which have a direct or organic relation to death. Hence statement made by the deceased long before the incident of murder is not admissible". (1974 CLJ (MP) 1200).

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A

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"Circumstances of the transaction ; General expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death are not admissible" (LR 66 IA 66) (18 Part 234).

B

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"Circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant. The condition of the admissibility of the evidence is that the cause of the declarant's death comes into question. It is not necessary that the statement must be made after the transaction has taken place or that the person making it must be near death or that the 'circumstance' can only include the acts done when and where the death was caused. ——Dying declarations are admissible under this clause".

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The alleged oral statements of Manju and what she has stated in her letters, Exs 30, 32 and 33 may relate to matters perhaps having a very remote bearing on the cause or the circumstances of her death. Those circumstances do not have any proximate relation to the actual occurrence resulting in her death due to potassium cyanide poison, though, as for instance in the case of prolonged poisoning they may relate to dates considerably distant from the date of the actual fatal dose. They are general impressions of Manju indicating fear or suspicion, whether of a particular individual or otherwise and not directly related to the occassion of her death. It is not the case of the prosecution that the present case is one of prolonged poisoning. Since it is stated by the learned authors woodroffe and Amir Ali in their tratise at page 947 that the decision of their Lordships of the Privy Council in *Pakala Narayanaswami* v. *Emperor* (1) sets the limit of the matters that could legitimately be brought within the purview of the expression 'circumstances of the transaction and that decision is referred to in several other decisions of our courts, it would be necessary to extract the relevant passage in this judgment. The learned Lords have observed at pages 75 and 76 thus:

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"A variety of questions has been mooted in the Indian courts as to the effect of this section. It has been suggested that the statement must be made after the transaction has

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(1) L.R. 66 I.A. 66

taken place, that the person making it must be at any rate near death, that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: general expression indicating fear of suspicion whether of a particular individual or otherwise and not directly related to the occiaslon of the death will not be admissible. But statements made by the dceeased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculapatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which inculdes evidence of all relevant facts. It is on the other hand narrower than "*res gestae*." Circumstances most have some proximate relation to the actual occurrence: though, as for instance in a case of prolonged poisoning, they may be related to dates at a considerable distance from the date of the actual fatal dose."

I am, therefore of the opinion that the oral evidence of these witnesses, P.Ws. 2, 3, 5, 6 and 20 about what Manju is alleged to have told them against the appellant and or his parents and what she has stated in her letters, Exs. 30 32 and 33, are inadmissible in evidence under s.32(1) of the Evidence Act and cannot be looked into for any purpose. At this stage. it may be stated that Mr. Ram Jethmalani, learned counsel for the appellant submitted that the said oral evidence of those five witnesses is inadmissible under s. 32(1) though at first he sought to rely upon the letters, Exs. 30, 32 and 33 which seem to lend support to the defence theory that it may be a case of suicide, he ultimately conceded that what applies to the relative oral evidence of P.Ws. 2, 3, 5, 6 and 20 would equally apply to the letters, Exs. 30, 32 and 33 and that they too would be inadmissible

A in evidence. The Additional Solicitor General who had strongly relied upon the said oral evidence of these five witnesses and the letters, Exs. 30, 32 and 33 at first proceeded in the end of his arguments on the basis that they are inadmissible in evidence. In these circumstances, I am firmly of the opinion that the oral evidence of P.Ws. 2, 3, 5, 6 and 20 about what Manju is alleged to have told them against the appellant and or his parents as well as the B letters, Exs. 32, 32 and 33 are inadmissible in evidence under s. 32(1) of the Evidence Act.

About Dr. Banerji (P.W. 33) who conducted autopsy on the body of Manju what my learnd brother Fazal Ali, J. has said in his C judgment is this:

> "In column 5 of post mortem notes Dr. Banerjee has clearly written 'can be a case of suicidal death' which indicates that in the absence of the report of the Chemical Examiner he was of the opinion that it could have been a case of D suicide. In his evidence P.W.33 has stated that in Ex. 128 in column No. 5 the contents scored out read 'time since the death' and since it was repeated in the next line he scored out the words in the second line. Despite persistent cross-examination the Doctor appears to have stuck to his stand. It cannot, therefore, be gainsaid that this matter was E of vital importance and expected the High Court to have given serious attention to this aspect which goes in favour of the accused. . . . In the original while filling up the said column the Docter appears to have scored out something. The filled up entry appears thus:—'mouth is closed with tip (something scored out) seen caught between the teeth. But F in the carbon copy of the report which was sent to the Chemical Examiner (Ex. 132 he has written 'caught between the teeth' in ink; but in the original there is something else. This is fortified by the fact that the copy of the report actually sent to the Chemical Examiner does not contain any interpolation against the said column where the filled G up entry reads 'inside mouth'. . . . These circumstances show that Dr. Banerjee (P.W.33) tried to introduce some additional facts regarding the position of the tongue . . . This, however, throws a cloud of doubt on the correctness or otherwise of the actual reports written by him and the one that was sent to the Chemical Examiner. It is obvious H that in the carbon copy which was retained by the Doctor

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the entries must have been made after the copy was sent to the Chemical Examiner".

I entirely agree with these findings of my learned brother Fazal Ali, J. But I am unable to share his view that these "circumstances B are not of much consequence the opinion of the Doctor was that Manju died by forcible administration of potassium cyanide or by the process of mechanical suffocation and that this aspect need not detain the Court any further because the High Court has not acceped the case of mechanical suffocation" and that though a number of comments were made on behalf of the appellant about Dr. Banerji's C integrity and incorrect report he does not find any substance in those contentions subject to what he has stated about him.

The fact that the High Court has rejected the case of the prosecution based on Dr. Banerji's report and evidence that it was D also a case of mechanical suffocation is not one that could be taken into consideration as a mitigating circumstance in judging the conduct of the Doctor who had conducted the autopsy in a case of suspicious death. The fact that he had reserved his opinion about the cause of death and had then noted in his report that the tongue was inside the mouth but has interpolated the words 'mouth is closed with tip (something scored out) seen caught between the E teeth' and 'caught between the teeth' only after receipt of the Chemical Examiner's report to support the view that it was also a case of mechnial sueffocation, is not a mitigating circumstance in favour of P: W. 33 The Doctor had scored out the words 'can be a case of suicidal death' and has persisted in his reply that he had scored out only the words 'time since the death' which he F claims to have written twice, which explanation has been rightly rejected by my learned brother Fazal Ali. J. The conduct of the Doctor in making these later inter polations and alterations in the records of the post mortem examination in the case of suspicious death in which the appellant has been sentenced to death by the two courts below, deserves serious condemnation. The Doctor has G tampered with material evidence in the case of alleged murder, may be at the instance of somebody else, ignoring the probable consequences of his act. In these circumstances, I am of the opinion that Dr. Banerji (P.W.33) is a person who should not be entrusted with any serious and responsible work such as conducting autopsy in the public interest. In this case the appellant would have gone to gallows on the basis of the evidence of P.W.33 as he would have the H

court to believe it, and theo ther evidence, if they had been accepted, but they have been rightly discarded by my learned brother Fazal Ali, J. as unworthy of acceptance against the appellant.

I agree with my learned brother Fazal Ali, J. that the High Court has clearly misdirected itself on many points in appreciating the evidence and has thus committed a gross error of law.

I feel that something has to be stated in the judgment in this case about the way the Investigating Officer and the learned Additional Sessions Judge, Pune who had tried the case had gone about their business. Charge No. 3 is against the third accused for instigating Mohan Asava (P.W. 30) to give false information to the police regarding the offence of murder namely, that the appellant found Manju dead when he tried to wake her up at 5.30 a. m. on 12.6.1982. It is the case of the prosecution itself that P.W.30 informed the police accordingly at 7 or 7.15 a.m. on that day after receipt of telephonic instructions from the third accused at 6.30 a.m. though he had himself seen the dead body of Manju earlier in the appellant's flat where he was taken by the third accused who had gone to his flat at about 4 or 4.15 a.m. and informed him that Manju was dead, and he (P.W. 30) left the appellant's flat a little later at about 5 or 5.15 a. m. after telling Dr. Lodha (P.W. 34) that he was going to report to the police. Thus, it would appear that the case of the prosecution itself is that P.W. 30 is the principal offender as regards giving false information to the police about the death of Manju. Yet the Investigating Officer had not filed any charge-sheet against P.W. 30 but has conveniently treated him as a prosecution witness. The Additional Sessions Judge, Pune appears to have exercised no control over the evidence that was tendered in this case and to have been oblivious of the scope of the examination of the accused under. s. 313 Cr. P.C. This is reflected by some of the questions put to the appellant. Question No. 24 relates to P.W. 20 not maintaining good health and falling ill now and then. Question No. 25 relates to P.W. 22 being a patient of high blood pressure and having suffered a stroke of paralysis 7 years earlier. Question No. 30 relates to a reception held at Pune on 13.2.1982 in connection with the appellant's marriage with Manju. Question No. 32 relates to P.W. 6 asking the appellant's father Birdhichand for permission to take Manju to Beed with her when the party from P.W.2's side started from Pune for Beed on 14.2.1982. Question No. 115 relates to P.W.30 indulging in criminal acts of rowdyism, tax evasion etc. and being known as a contact-man of the police. S. 313 Cr. P. C.

lays down that in every inquiry or trial for the purpose of enabling the accused personally to explain any circumstance appearing in the evidence against him the Court may at any stage, without previously warning the accused, put such questions to him as the court considers necessary and shall, after the witnesses for the prosecution have been examined and before he is called for his defence, question him generally on the case. It is clear that the evidence on the basis of which the above questions have been put to the appellant is wholly irrelevant and that those questions do not relate to any circumstance appearing in the evidence against the appellant. The learned Additional Sessions Judge was bound to exercise control over the evidence being tendered in his court and to know the scope of the examination of the accused under s. 313 Cr. P. C.

In the end, as I said earlier, I agree with my learned brother Fazal Ali, J. that the appeal has to be allowed. Accordingly I allow the appeal and set aside the conviction and sentence awarded to the appellant and direct him to be set at liberty forthwith.

SABYASACHI MUKHARJI, J. I have the advantage of having read the judgments prepared by my learned brothers Fazal Ali, J. and Varadarajan, J. I agree with the order proposed that the appeal should be allowed and the judgments of the courts below should be set aside and the appellant Sharad Birdhichand Sarda be acquitted of the charges framed against him and he should ber eleased forthwith. I do so with some hesitation and good deal of anxiety, because that would be interfering with the concurrent findings by two courts below on a pure appreciation of facts. The facts and circumstances have been exhaustively and very minutely detailed in the judgment of my learned Brother Fazal Ali, J. Those have also been set out to certain extent by my Brother Varadarajan, J. It will therefore serve no useful purpose to repeat these here. It is necessary, however, for me to make the following observations.

It is a case of circumstantial evidence. It is also undisputed that the deceased died of potassium cyanide on the night of 11th and 12th June. 13th June was the date fixed for the betrothal of the sister of the accused. There is no evidence that the accused was in any way hostile or inamicable towards his sister. The deceased had a very sensitive mind and occasionally had suffered from mental depression partly due to the fact of adjusting in a new family and partly due to her peculiar mental make up but mainly perhaps due to the family set up of the accused husband. There is no direct

evidence of administering poison. There is no evidence either way that either the deceased or the accused had in her or his possession any potassium cyanide. In these circumstances my learned brothers, in view of the entire evidence and the letters and other circumstances, have come to the conclusion that the guilt of the accused has not proved beyond all reasonable doubt.

As I have mentioned before, I have read the two judgments by my two learned brothers and on some points namely, four points mentioned in the judgment prepared by my Brother Varadarajan. J., he has expressed views different from those expressed by Fazal Ali, J. and these are:—

(1) ill-treatment of Manju by the appellant ;

(2) intimacy of the appellant with Ujwala (P.W.37) ;

(3) admissibility of Manju's letters Exs. 30, 32 and 33 and the oral evidence of P.Ws. 2, 3, 5, 6 and 20 about the alleged complaints made by Manju against the appellant under s.32(1) of the Evidence Act ; and

(4) conduct of Dr. Banerji (P.W.33) who had conducted autopsy on the body of Manju.

On the three points, namely ill-treatment of Manju by the appellant, intimacy of the appellant with Ujwala (P.W.37) and the conduct of Dr. Banerji (P.W.33) who had conducted autopsy on the body of Manju, I would prefer the views expressed by my learned brother Fazal Ali, J. On the question of admissibility of Manju's letters Exs. 30, 32 and 33 and the oral evidence of P.Ws. 2, 3, 5, 6 and 20 about the alleged complaints made by Manju against the accused under section 32(1) of the Evidence Act, my learned brother Fazal Ali, J. has observed about section 32(1) as follows :—

> "The test of proximity cannot be too literally construed and practically reduced to a cut-end-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama

would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. *For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under s.32.*" (*Emphasis by me*). A B C

I would, however, like to state here that this approach should be taken with great deal of caution and care and though I respectfully agree with Fazal Ali, J. that the test of proximity cannot and should not be too literally construed and be reduced practically to a cut-and-dried formula of universal application but it must be emphasised that whenever it is extended beyond the immediate, it should be the exception and must be done with very great caution and care. As a general proposition, it cannot be laid down for all purposes that for instance where a death takes place within a short time of marriage and the distance of time is not spread over three or four months, the statement would be admissible under section 32 of the Evidence Act. This is always not so and cannot be so. In very exceptional circumstances like the circumstances in the present case such statements my be admissible and that too not for proving the positive fact but as an indication of a negative fact, namely raising some doubt about the guilt of the accused as in this case. D E F

For the purpose of expressing my respectful concurrence with the views of Justice Fazal Ali, it is not necessary for me to agree and I do not do so with all the detailed inferences that my learned brother has chosen to draw in respect of the several matters from the exhibits in this case. I am also with respect not prepared to draw all the inferences that my learned brother has chosen to draw in the paragraph beginning with the expression "the careful perusal of this letter revealed the following features". This my learned brother was speaking in respect of Ex. 33. I however, respectfully agree with my learned brother when he says that a close analysis and ading of the letter namely Ex. 33 clearly indicates : G H

A (a) that the deceased was extremely depressed.

(b) that there was a clear tendency resulting from her psychotic nature to end her life or commit suicide.

Similarly I have some hesitation about the English rendering B of Ex. 32 which is letter dated 8th June, 1982 which has been set out by my learned brother and which has been set out in his judgment which contains the expression "I do not know why there is such a dirty atmosphere in the house?" As the original letter was read out in Court and we had the advantage of that, I am inclined to take the view that the correct and the more expressive expression C would be "I do not know why there is such a foul atmosphere in the house ?" Read in that light and in the context of other factors, this letter causes some anxiety. It the deceased was sensing foul atmosphere, why was it? But this again is only a doubt. It does not prove the guilt of the accused.

D In view of the fact that this is a case of circumstantial evidence and further in view of the fact that two views are possible on the evidence on record, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to him. In that view of the matter I agree E with my learned brothers that the guilt of the accused has not been proved beyond all reasonable doubt.

In the premises as indicated before, I agree with the order proposed.

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S.R. *Appeal allowed.*