

Shabbir Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-09-2001

Reported in : 2002CriLJ1561; I(2002)DMC222

Judge : J.G. Gupta and ;Bhanwar Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 1608 of 1980

Appellant : Shabbir

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Keshaw Sahai and ;Brijesh Sahu, Advs.

Disposition : Appeal allowed

Judgement :

Bhanwar Singh, J.

1. This appeal is directed against the verdict of conviction and sentence dated 21.7.1980, passed by Sri G.R.S. Tandon, the then II Additional Sessions Judge, Muzaffarnagar, whereby the appellant Shabbir was convicted under Section 302, I.P.C. for having strangled his wife and sentenced to imprisonment for life.

2. In brief, the facts giving rise to this appeal may be recapitulated as follows :

The accused appellant Shabbir was married to Maimoona @ Mehmooda in the year 1977. They lived together for some time with harmony but the cordial relationship between the two did not last longer. The main cause of their strained relationship was that Shabbir being unemployed was in the habit of selling valuable household effects including jewellery of his wife. Maimoona always resented to the appellant's acts of alienating her jewellery and other household goods but her protests were not approved of by him and very often the latter used to beat her. A complaint was lodged by Mehboob Ali, the brother of the deceased, to the appellant's father, namely, Manga, who made his best endeavour to convince the appellant not to indulge in violence with his wife but it all fell on his deaf ears. Being unhappy over the situation, Manga asked the appellant to live separately. As a consequence, the appellant along with Maimoona initially shifted to Jhilana village but the duo did not stay there for long and then migrated to the town of Shamli. In Shamli also, the appellant sold his wife's jewellery and this caused too much annoyance to Maimoona, who left him and went to her father's abode at village Kheri and requested his father-in-law to send Maimoona with him. Not only that he submitted his apology for all his acts of omission and commission vis-a-vis his behaviour with his wife but also he promised and assured to keep her happy with affection. On his request and assurance, Mehmooda was allowed to go with the appellant and this time they lived together in a rented accommodation in Mohalla Malhupura at Muzaffarnagar. This accommodation was arranged by Mehboob Ali who also lived in the same Mohalla. However, the appellant's promises and assurances proved futile when barely a week's after he again started quarrelling with his wife and refused to do any job for livelihood. About one and a half months before the occurrence, Shabbir had mercilessly beaten his wife, who called her father and when Mehboob Ali tried to persuade him to be of a good behaviour, the accused made an attempt to assault him but he escaped unhurt; rather he himself slapped the accused with a view to give him a sour taste of not only maltreating his wife but also all her family members. Mehboob Ali and his father both took away Mehmooda to village Kheri and she started living there. However, Dr. Latif, who was the son of Mehboob Ali's father's sister, came to the village and accompanied with him was none else than Shabbir who again

tendered his apology for misbehaving with his wife and also her brother and promised not to repeat any such mistake in future. He reiterated his request to carry his wife which was conceded to and this time Dr. Latif had taken both of them to Muzaffarnagar on the assurance of keeping an eye upon them and they stayed in one room apartment which was part and parcel of Dr. Latif's house. However, the supervision of Dr. Latif over the duo could not check their relationship from becoming strained again. About a week before the date of occurrence, Shabbir disposed of some jewellery of his wife and when Dr. Latif pressurised him to hand over the sale proceeds thereof, he pretended to have spent a part of it but surrendered a paltry sum of Rs. 330/- only. A written compromise was executed by the accused giving false assurances of treating his wife with honour and affection. However, as was the prosecution case, on the fateful night between 3/4.7.1979 the accused appellant Shabbir killed his wife by strangulating her with Niwar Patti (a thick cotton tape), by tying it around her neck. As recited in the F.I.R. lodged by Nawab Ali, son of Dr. Latif Ali, the shrieks of Maimoona were loud so as to be heard by him during his sleep and he ran and rushed towards the room in which she and the appellant were living and when he enquired by giving a call to the appellant as to what had happened, the latter without opening the door conveyed that Mehmooda felt frightened in a dream and raised her shrieks under fear but she was alright when he comforted her. Nawab Ali believed the appellant's version and, therefore, came back to the courtyard of his house where he was sleeping and after a brief spell he resumed his sleep. The other day i.e. on 4.7.2001 the accused appellant's father arrived at the shop of Dr. Latif to enquire about the welfare of his son and the latter's wife. Dr. Latif sent his employee and relative Sarwar to call Shabbir. Sarwar knocked at the door of Shabbir's apartment and when there was no response, he opened the Kundi and to his shock and horror saw Mehmooda lying naked and dead. He immediately rushed to Dr. Latif's shop and conveyed as to what he had seen. All then arrived at the site of occurrence and saw Mehmooda lying dead. Nawab Ali lodged an F.I.R., whereupon a case under Section 302, I.P.C. was registered against the accused appellant, who had absconded in the morning of 4th July, 1979.

3. Sub-Inspector Asharam Chaudhary of P.S. Kotwali, Muzaffarnagar took up the investigation of this case, inspected the room wherein Mehmooda was lying dead,

prepared a site-plan of the said place and also inquest report of the dead body. He also took Niwar Patti, Salwar (trouser) and Tahmad, which were found on the body of the deceased, in his custody and prepared a memo thereof. The dead body was packed and sealed by him in a cover and he got it sent for autopsy. Dr. P. Sharma (P.W. 8) conducted post-mortem of the deceased and prepared post-mortem report Ex. Ka 10. According to his opinion, the cause of death of Mehmooda was asphyxia as a result of strangulation. Ligation marks were noticed by the doctor around the neck of the deceased. However, he did not find any sign of sexual violence on the corpse.

4. The Investigating Officer examined the witnesses and searched for the accused but he was not traceable. The accused surrendered himself in the Court. The Investigating Officer, in the meantime, submitted charge-sheet Ext. Ka 9 against the accused appellant.

5. At the trial, Shabbir denied all the allegations levelled against him by the prosecution and pleaded not guilty.

6. There was no eye-witness of the occurrence and whatever the evidence was adduced on behalf of the prosecution, it was all circumstantial. P.Ws. 1 and 2 Head Constable Rajendra Singh and Maniram were the formal witnesses of the police force; whereas the former had prepared G.D. entry on the basis of the F.I.R., the latter carried the dead body of the deceased to the mortuary. P.W. 3 Nawab Ali is the son of Dr. Latif, in whose house the deceased was living in one-room apartment. He testified that on the night of occurrence, he was sleeping in his courtyard. He woke up from his sleep on hearing the cries of Maimoona, attracted by which he came out of his house and asked Shabbir as to what the matter was. Shabbir without opening the door, said loudly that his wife Maimoona raised her cries in sleep, perhaps on account of having seen a horrifying dream but there was nothing to worry about, as she was by then comfortable. On hearing this, he went back to sleep. The other day, the father of the accused came to the shop of Dr. Latif and the latter sent his servant Sarwar for Shabbir but he was shocked to see that Maimoona was lying dead in her room. This witness stated further that Shabbir had killed Maimoona during the night and at the time of her

being strangulated, she raised her shrieks, hearing which he came to her rescue but the accused pretended of there being nothing abnormal. In this way there was combination of two facts - first, the presence of the accused in the room where the occurrence had taken place, and the other that of shrieks of the deceased, which led to a strong circumstantial evidence totally consistent with the hypothesis of the guilt of the accused.

7. P.W. 4 Mahboob Ali is the real brother of the deceased. He proved the fact about the strained relationship between his sister Maimoona and her husband Shabbir. He asserted that the accused was an unemployed person and since he had no source of livelihood, he was in the habit of selling Maimoona's jewellery. He used to beat her frequently on protests being lodged on one issue or the other. Also he stated that Shabbir accompanying with Dr. Latif came to his father's house and after apologising asked for permission to take Maimoona with him and when all family members were convinced of his bona fides and on assurance of Dr. Latif to keep supervision upon the couple, Maimoona was allowed to go with Shabbir.

8. P.W. 5 Hasan is the scribe of the F.I.R. It was a coincidence that he was sleeping in the house of Dr. Latif, as the latter had gone to Delhi during the day and did not come back in time. Hasan had come to collect his medicine from Dr. Latif and preferred to stay over night so as to wait for Dr. Latif and get himself examined the other day. He also stated that he heard the cries of the deceased during the night but did not probe further at that point of time, as Shabbir informed that Maimoona was frightened of a dream. He added further that on the same night at about 4 or 4.30 a.m. when he was going to offer prayers in a mosque, he came across the accused Shabbir, who was going abnormally in bewildered state of mind and on being questioned, he replied that he was in hurry as going for an urgent work. So he tried to show the complicity of the accused with the commission of the crime by establishing the fact of Shabbir being in the same room in which Maimoona was found dead and then escaping from the scene of occurrence in a perplexed mental state.

9. P.W. 6 Ayub appeared in the witness box before the Trial Court to prove the fact of 'extra-judicial confession' alleged to have been made by the accused. According

to his evidence, the accused met him at a wine-shop, a day after the occurrence and confessed his guilt to the effect of his having killed his wife. He begged for his help while repenting for the blunder he had committed.

10. P.W. 7 SI Asharam Chaudhary was the Investigating Officer of this case. He inspected the room where Maimoona was lying dead, prepared the inquest report and the site-plan Ex. Ka 8. He collected Niwar (material Ext. 1), Salwar (material Ext. 2) and Tahmad (material Ext. 3) and prepared their memo. He then examined all the relevant witnesses. The important circumstantial evidence, viz., the strained relationship between the accused and the deceased and both being last seen by Nawab Ali in the one-room apartment coupled with the false communication by the accused of everything being alright to Nawab Ali when he expressed his inquisitiveness as also his escaping from the site of occurrence, led the Investigating Officer to arrive at a conclusion that the accused alone and none else had strangled Maimoona. P.W. 6 Dr. P. Sharma proved the post-mortem report Ext. Ka 10. According to him, the cause of the death of Maimoona was asphyxia by way of strangulation. He also noticed a circular incised wound in place of the left nipple, which was missing.

11. No evidence was produced in defence. The Trial Court believed the prosecution version and relied upon the circumstantial evidence of the accused being with his wife during the night of occurrence and then running from the scene, which established a strong basis to arrive at a conclusion that the accused and accused alone had committed the murder of his wife Maimoona. The Trial Court, however, rejected the prosecution theory of the accused appellant's 'extra-judicial confession' alleged to have been made to Ayub P.W. 6. It also did not believe the testimony of P.W. 5 Hasan to the effect that he had heard the shrieks of the deceased or saw the accused running from the scene in a perplexed state of mind. Finding the circumstantial evidence brought on record by Nawab Ali P.W, 3 and Mehboob Ali P.W. 4, the Trial Court recorded a finding of the accused being guilty under Section 302, I.P.C. and convicting him for the said offence sentenced to imprisonment for

12. Feeling aggrieved of the judgment of conviction and sentence passed by the Trial Court, the accused has preferred this appeal reiterating his defence version that there was no material evidence on record against him so as to prove his complicity with the commission of crime.

13. We have heard the learned Counsel Mr. Somit Gopal, for the appellant and the learned Additional Government Advocate and perused the record, It may be mentioned that Mr. Somit Gopal was appointed Amicus Curiae to assist the ..Court in the absence of the appellant, who was absconding,

14. It is to be seen as to whether taking the totality of the circumstances, it can be said that the prosecution case is established against the accused i.e. the facts established are inconsistent with the innocence Of the accused and incapable of explanation of any hypothesis other than his guilt. As observed earlier, the entire prosecution theory is based on circumstantial evidence against the accused. It is a long-drawn view that the circumstantial evidence proving guilt of the accused should be so strong as to destroy and rebut the presumption of innocence of the accused. In other words, it should be properly established that such a circumstantial piece of evidence leads to no other inference but of the guilt Of the accused. On a careful perusal of the case in hand, we find in so far as the prosecution case against the accused is concerned, that the circumstantial evidence produced before the Court lacked chain of events and had no consistency with the hypothesis of the guilt of the accused.

15. At the Very outset of our discussion, we would like to refer to an incredible averment of the prosecution witnesses that the accused Shabbir lived together with his wife either before the occurrence or was there with her in one-room apartment during the night of occurrence. It is significant to note that on account of the strained relationship between the husband and the wife, the duo had separated not only once but twice. The defence version was that the deceased was a woman of loose character and easy virtues as a result of which she herself was living Separately by deserting the appellant. Controverting the statement of the-appellant, P.W. 4 Mehboob Ali testified that his sister Mehmooda was assaulted by him on occasions more than one, in consequence whereof she, on

occasions more than one, was compelled to go to her father's house in village Kheri but finally Shabbir accompanied with Dr. Latif came to the village some one and a half months before the occurrence and took her with him to Muzaffarnagar and started living in one-room apartment of Dr. Latif. In this context, it may be observed that the evidence about Shabbir having come to his village with Dr. Latif with a view to carry his wife with him enabling the two to live together in Dr. Latif's one-room apartment is not at all convincing. Mehboob Ali is said to have disclosed to the Investigating Officer tl at when Dr. Latif came to village Kheri, Shabbir was accompanying him. However, Sub-Inspector Asharam Chaudhary, who investigated this case, denied the suggestion that Mehboob Ali had disclosed to him about Shabbir having come together with Dr. Latif to take his wife to Muzaffarnagar. It, therefore, becomes doubtful that Shabbir had come to village Kheri with Dr. Latif and carried his wife Maimoona to the house of Dr. Latif.

16. It is further established from strong circumstances that Shabbir had neither gone to his father-in-laws' house so as to request for carrying his wife to Dr. Latif's house, nor he was living with Maimoona either on the night of occurrence or prior thereto. According to the evidence of Nawab Ali, he went into the room of Maimoona on the eve of occurrence and found that there was only one cot there. It was on this cot that Maimoona was found lying dead. No doubt it can well be inferred that for a day or two, a husband and wife can sleep on one cot but this position cannot be expected to go on for all times to come. Even husband and wife need a double bed; it is different that it may be a single piece double bed or two separate cots. However, the fact remains that there was only one cot inside the room and this leads us to draw an inference that only one person, namely, Mehmooda alone was living in that Latif's one-room apartment. It rules out the possibility of Shabbir being residing with her. The fact of Shabbir being not there with his wife is further proved from two-fold circumstances - the first being that no belongings of the accused were found there in the room and the other, to rule out the cohabitation of the husband and wife was that both of them used to cook their food separately. Taking the first point for discussion, it may be observed that the Investigating Officer SI Asharam Chaudhari conducted a thorough search and checking of the room but did not find the accused's belongings - either garments, in the shape of Baniyan, underwear, shirts, Kurta and Payjama, or anything else

so as to establish his living with his wife. The Investigating Officer noticed that two boxes were lying there. He did not remember as to whether the boxes were locked or they were lying unlocked, nor he considered it appropriate to search them out so as to find any article tangible or intangible which could establish Shabbir's habitation in the room. Also the Investigating Officer did not notice any garments hanging on a nail or lying elsewhere in the room. It is also not established that the Tahmad, material Ext. 3 was ever used by the accused. There is no evidence to establish any link between the said Tahmad and the accused. Obviously thus, the absence of the accused's belongings in the room negatives the possibility of his being residing with Maimoona on the night of occurrence or prior thereto.

17. Coming to the second strong circumstance that the accused and his wife both used to cook their food separately, raises a question as to why they were obliged to prepare their meals without the help of each other and at different intervals by bringing their utensils to the kitchen of Dr. Latif. Nawab Ali conceded that Shabbir and Mehmooda were not dining together; rather they used to bring their utensils to the kitchen situated inside the house and prepare their food independent of each other. In view of this clear-cut admission, it is difficult to believe that Shabbir was living with his wife in one-room apartment of Dr. Latif where she was not even obliging him by preparing meals. This rather corroborates the defence version that Shabbir was living separately in his village with his father. The existence of a bundle of bangles appear to indicate that Mehmooda was carrying on the occupation of selling bangles while living in that room. There is no evidence to prove that it was the accused who was carrying on the occupation of selling bangles. It is also admitted to Nawab Ali that his aunt Mehmooda was brought there in the room by his father, namely, Dr. Latif. As stated above, the prosecution failed to establish that Shabbir also came along. What is further significant to note is that Dr. Latif appeared before the Trial Court but he did not utter a single word and as observed by the Trial Court, he appeared to be incapable of making any statement. It can well be derived, in these circumstances, that Shabbir was not living with his wife at the time and place of occurrence.

18. The very important circumstance brought forth on behalf of the prosecution was that Nawab Ali and Hasan both heard the shrieks of the deceased at about 1

or 1.30 a.m. on the night of occurrence and when Nawab Ali came outside the room and asked about the abnormal cries, Shabbir was alleged to have conveyed that there was nothing to worry about; as Maimoona was frightened of a bad dream. Nawab Ali is said to have felt satisfied and convinced with the explanation offered by the accused and, therefore, he came back to his cot and fell asleep again. This version of P.W. 3 seems to be nothing but a tissue of lies. Nawab Ali was a man of prudence. He was a well-educated person, helping his father in dispensation of medicines, in spite of the fact that he did not hold any diploma or degree in the art of Pharmacy. He was well aware of the fact that relationship between the accused and his wife Maimoona was tense and strained so much so that each one of them were preparing food separately. He also knew the background through which the duo had been traversing vis-a-vis their strained relationship and also he was acquainted with the facts of the accused having assaulted his wife a number of times, alienating her jewellery and doing no job to earn livelihood, still it is strange that Nawab Ali believed that there was nothing abnormal following the painful cries of the deceased. Nawab Ali admitted the shrieks in terms of ugh, 'OPH, HAY RE MAR GAEE' (Oph, I am dying). It is unbelievable that even on having heard a loud cry in terms of above, fully knowing the background of bitter relationship between the two, Nawab Ali felt convinced with the explanation of the accused about Maimoona being frightened of a horrifying dream, which eventually averred him from the scene.

19. The evidence of P.W. 5 Hasan, who was a chance witness, was rightly rejected by the Trial Court. Dr. Latif did not maintain any register of patients nor there was any other record to prove that Hasab was undergoing Dr. Latif's treatment. As stated by him, the hue and cry raised by the deceased were disturbing so much so that Nawab Ali first came to the room in which he was sleeping and then went outside so as to negotiate access to the room of the deceased. Two persons were enough to have forced the accused Shabbir, if he was there inside the room at the relevant time, to open the door so as to find out the truth. The presence of Hasan in the house of Dr. Latif is very much doubtful, as he could not even disclose the name of Molvi of the mosque where he went to offer the prayers in the early hours of the day following the occurrence. It was also doubtful that he was in a position to have identified the accused while going with a

fast speed in a perplexed state of mind as at that time it would have been dark all around.

20. Then question arises as to why and for what purpose the accused should have stayed in the room for nearly three hours if he had killed his wife. Nawab Ali disclosed that he heard the shrieks of the deceased at about 1 to 1.30 a.m. P.W. 4 Hasan testified that he saw the accused going in an abnormal manner at 4 or 4.30 a.m. i.e. nearly three hours after the occurrence. There is no convincing or plausible explanation from the side of the prosecution to establish the accused's stay in the room of occurrence nearly for three hours after strangulating his wife.

21. In view of all these facts and circumstances, it may be held that the evidence of P.W. 3 Nawab Ali and P.W. 4 Hasan was full of infirmities and inconsistencies with disturbing features all around. Their evidence totally failed to inspire confidence in the prosecution story that Shabbir was inside the room of the deceased on the night of occurrence. In the absence of his habitation with his wife, his involvement or participation in the commission of the crime is definitely ruled out.

22. The evidence of extra-judicial confession made by the accused to P.W. 6 Ayub was also rightly held to be as false by the Trial Court as Ayub having visited mortuary a day before the date of extra-judicial confession was in the know of the accused's involvement in the commission of murder of his wife. He knew well in advance that Shabbir was an absconder on account of his having run away and he was also aware of the fact that the police was behind him. Still he did not consider it appropriate either to apprehend the accused at the shop of wine where the extra-judicial confession was alleged to have been made, or to inform the police. Moreover, as observed by the Trial Court, the accused was not expected to have gone to Ayub at a wine shop where so many customers were expected to be present.

23. Further, it is also astonishing to note that Nawab Ali and Hasan both heard the shrieks of the deceased in the dead hours of the night and Hasan had also seen the accused going away from the site of occurrence; still they did not consider it appropriate to open after sunrise the door of the deceased's apartment which was

bolted from outside. In normal course, the first step for Nawab Ali would have been to visit the room of the deceased in the morning hours of the day so as to check and find out whether everything was in order or not. However, no such attempt was made and not only this, but Nawab Ali arrived at his shop and when accused's father Manga came there at about 11.30 a.m. or so, Sarwar was sent by Dr. Latif to call Shabbir. Again question arises as to why Manga did not go straight to the room of his son Shabbir if the latter was living there with his wife. His arrival in the city of Muzaffarnagar and going straight to Dr. Latif's shop appears to indicate that he was called by the police or his relatives after it came to the notice that Maimoona was lying dead in her room. It is admitted to Nawab Ali that during the day preceding the night of occurrence he had gone to attend the marriage of the daughter of his relative Aflatoon. The marriage took place at village Phugana. Nawab Ali stated that Aflatoon was related to Shabbir also. While making his statement under Section 313, Cr.P.C, Shabbir categorically stated that he had gone to attend the same marriage during the day and from there he returned to his village Jhinjana where he stayed during the night of occurrence. Although it was not a plea of alibi taken by the accused as observed by the learned Trial Court, yet in view of the admissions of Nawab Ali it is established that the accused Shabbir was not there in the city of Muzaffarnagar on the night of occurrence; otherwise he would have, in normal course, come there along with Nawab Ali.

24. The bitter relationship between the accused and the deceased alone was not enough muchless a strong circumstance to establish the accused's complicity with the commission of the crime. P.W. 4 Mehboob Ali is the real brother of the deceased. He testified before the Trial Court that the accused was a shirker and had no desire to earn his livelihood. Time and again he sold Maimoona's jewellery to acquire comfort of life. At times she was assaulted by Shabbir, in consequence whereof she was driven to her father's place. All suggestions and lessons of leading a good life with harmony fell on his deaf ears. He added further that after several incidents of marpit and disposal of household effects as also jewellery, a paper was written at the house of Dr. Latif six days prior to the occurrence. The said paper was drawn by the accused Shabbir in his own handwriting and there were signatures of several witnesses thereon. Shabbir sent the said stamp paper to Mehbbob Ali by post and after the occurrence, the said paper was handed over

to the Investigating Officer. Indeed such a stamp-paper duly executed in the manuscript of the accused would have been of great help and assistance to the Court but this paper has not yet seen the light of the day. The Investigating Officer denied receipt of any such paper from Mehboob Ali, although a reference to some such writing was given to him. In the absence of such an important document, which was definitely executed by the accused; a presumption could be drawn that if produced, it would have supported the defence version and would have gone against the prosecution story. Therefore, suppression of such a piece of document seems to be tainted with mala fides. It appears, as has also been stated by the accused, that after his relationship with his wife having become strained, they had started living separately. It was also stated by Shabbir that Maimoona was not keen and willing to cohabit with him on account of her being a woman of easy virtues.

25. The investigation of this case too has not been conducted in a fair manner. Right from the very beginning, the accused claimed identification by two witnesses, namely, Hasan and Naseemuddin, who were alleged to have seen him going from the place of occurrence the early hours of the day following the incident. There was an order of the Magistrate directing the Investigating Officer to hold an identification parade and get the accused identified by the aforesaid two witnesses, but the Investigating Officer did not bother to make arrangements for such identification. Once or twice, the jail remand of the accused was sought on the ground of the accused being put up for test identification, yet no endeavour in this direction was made. It is different as to what would have been the result of the test identification and the Trial Court's observation that the evidence of Hasan was not acceptable too, has no bearing upon holding of the desired test identification parade as sought for by the accused and ordered by the Magistrate. The lapse on the part of the Investigating Officer is a pointer to the conclusion that since it was a case of weaker evidence or rather no evidence, he was playing hoodwink so as to prevent the consequential effect which could prove favourable to the accused in case the identification was held.

26. Otherwise also, the Investigating Officer had a casual approach to the investigation of this case. He interrogated Dr. Latif more than month after the

occurrence and an important witness Sarwar, who was the first person to have witnessed the dead body of Maimoona, was not at all interrogated. In view of the delayed and tainted interrogation and examination of only partisan witnesses whose evidence falls too short to establish the guilt of the accused, we are inclined to hold that the prosecution failed to establish a chain of events leading to the irresistible and inescapable conclusion which could be consistent with the hypothesis of the guilt of the accused. The majority view of the citation Raghav Prapantia Tripathi and Ors. v. State of U.P., 1963 (1) Criminal Law Journal 70, as relied upon by the learned Counsel for the defence, certainly supports the case of the accused as the circumstances brought forth by the prosecution are totally insufficient to draw a sole conclusion that the husband committed murder of his wife Maimoona. In other words, there was no circumstantial evidence worth the name credit, which would have destroyed the presumption of innocence of the accused. The two citations reported in AIR 1984 SC 1622, Sharad Sarda v. State, and 1994 Criminal Law Journal 197, Kamala Sathi v. State, referred by the learned Additional Government Advocate are of no help to the prosecution as the nature and character of the circumstantial evidence acted upon by the prosecution could not lead to a conclusive proof consistent with the hypothesis of the guilt of the accused, nor there was any chain of evidence so as to lead a reasonable interpretation holding the accused to be guilty,

27. In view of what has been discussed above, we are of the decisive view that the prosecution miserably failed to establish the guilt of the accused, as the circumstantial evidence was shaky, inconsistent, full of infirmities and having absolutely no chain of events leading to a definite conclusion, which could be said to be consistent with nothing but the .guilt of the accused.

28. In the result, this appeal is allowed and the verdict of conviction and sentence for imprisonment of life passed against the accused appellant Shabbir is set aside. He is acquitted of the charge of murder levelled against him under Section 302, I.P.C.

Mr. Somit Gopal, Amicus Curiae will get his fees as per rules.

