

State of M.P. Vs. Vedri

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Court : Madhya Pradesh

Decided On : Aug-10-2000

Reported in : 2001CriLJ189; 2001(2)MPHT69; 2000(3)MPLJ471

Judge : Mr. S.S. Jha and ;R.B. Dixit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 399, 400 and 402; [Evidence Act, 1872](#) - Sections 3, 8, 9 and 154; Arms Act - Sections 25 and 27; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 160/86

Appellant : State of M.P.

Respondent : Vedri

Advocate for Def. : Shri S.P. Gupta, Sr. Adv.

Advocate for Pet/Ap. : Shri S.M.A. Naqvi, Dy. Govt. Adv.

Disposition : Criminal appeal allowed

Judgement :

R.B. Dixit, J.

1. The lust, passion and greed makes the man blind, who can go to any extent in committing crimes even against his kith and kin. This is an unfortunate case, as

alleged, where accused-respondent had killed his own wife and young married daughter on intervening night of 20-21st June, 1984.

2. About 20 years before the incident, deceased Shyam Sundri was married to accused-respondent and from this wed-lock after about 8 to 10 years, a daughter deceased Kamlesh was born. After about 7-8 years, accused entered into second marriage with Sukhrani and that was the beginning of befalling calamities on his first wife deceased Shyam Sundri. It is said that after selling a part of his ancestral agricultural land, accused performed marriage of his daughter deceased Kamlesh some 4-5 years before the incident with Devi Singh (P.W. 3). After some time, some other agricultural lands, which stood in the name of Jagdevi (P.W. 7), mother of the accused, were sold and out of the sale proceeds, a plot was purchased at Gohad chauraha in the name of Sukh Rani, second wife of the accused. The deceased Shyam Sundri feeling aggrieved by sale of ancestral property thereby took it as future loss to her and her daughter, filed a civil suit on 14-5-1983 in the Court of Civil Judge, Gohad against accused, his second wife, Sukhrani and Mahila Hem Kuwar. She had also filed objections before the Tehsildar Gohad against mutation proceedings whereunder mutation was proposed in favour of Hem Kuwar on the basis of sale-deed executed by Jagdevi in her favour in respect of S.N. 418. It was alleged by the deceased Shyam Sundri Bai that her husband is a shrewd and mischievous type of person, who in order to avoid her maintenance has managed to record ancestral land in the name of his mother and had also sold a part of the land to Hem Kuwar. It is further alleged that after marriage of her daughter, accused had started treating her with mental and physical cruelty and beating her under the influence of liquor. In order to expel her from the house, her mother-in-law Jagdevi and second wife of accused, Sukhrani also abetted cruelty and beating by the accused. They had also snatched her jewellery, received from her parental house as Estri Dhan.

3. Sarman Singh (P.W. 9), brother of deceased, Shyam Sundri, after about 5-6 months from second marriage by accused, was approached by Shyam Sundri, who told him about the atrocities committed upon her by the accused. Since accused had neglected the deceased Shyam Sundri some 3-4 years before the incident, a case for awarding maintenance to her was filed in Gohad Court. Since

then Shyam Sundri started residing at village Ehrani with her brothers. Some 15 days before the incident, when deceased Shyam Sundri had appeared for recording her statement in the maintenance case against the accused, the accused offered her maintenance and to keep her with him. Shyam Sundri, therefore, accompanied with her daughter-deceased Kamlesh went to live with accused at village Tehri. The returning of deceased with accused seems to have caused another trouble in the house because both the wives of accused quarrelled and consequently 2nd wife Sukhrani left for her parental house.

4. On the fateful intervening night of 20-21st June, 1984, it is alleged that when deceased Shyam Sundri and her daughter deceased Kamlesh were sleeping on the cot, accused assaulted and killed them with kulhadi (axe). After the assault, accused had disappeared and remained absconded, when he was arrested in Crime No. 305/80 of Police Civil Lines, Morena and in compliance of production warrant, he was brought before the committal Court on 1-1-1985.

In the morning, Jagdevi (P.W. 7), mother of the accused informed about incident to her neighbours. Pappu alias Harish Chandra Singh (P.W. 8) who went to inform the incident to Devi Singh (P.W. 3), brother of the deceased, who lodged the FIR (Ex. P-9) at Police Station Gohad Chauraha. On the basis of this report, Police Endori registered Crime No. 63/64 under Section 302, IPC. During inquest, Panchnama of the dead body of Kamlesh (Ex. P-2) and Panchnama, of the dead body of Shyam Sundri (Ex. P-3) were prepared. Spot map (Ex. P-1) was drawn. Blood stained and plain soil from the spot (Ex. P-4) was collected. Blood stained cot, dari, the broken tooth and piece of mandible (Ex. P-5) were recovered from the spot.

5. The dead bodies of Shyam Sundri (Ex. P-15) and Kamlesh (P.W. 16) were sent for post-mortem and Dr. R.D. Chaturvedi (P.W. 11) who performed the autopsy of the dead bodies found as follows:--

Post-mortem report (Ex. P-15-A) of the dead body of Shyam Sundri-

(1) Incised wound 3' x 3/4' over parietal region was found 2 1/2' above hair line middle. Bone is visible from wound which is fractured. Blood meninges and brain

matter coming out from wound. On opening the wound, bone found fractured. On removing the bone meninges and brain matter coming out from wound. Dural cavity found full of blood.

(2) Incised wound 4 1/2' x 1 1/2' obliquely placed was present on left cheek extending from above of nose to angle of jaw. Clotted blood present around wound. Left Maxilla was found fractured. Some teeth were missing, other were found loose.

Cause of death was due to shock and haemorrhage due to injury, laceration to brain substance.

Post-mortem report (Ex. P-16-A) of the dead body of Kamlesh-

(1) Incised wound 2 1/2' x 1/2' x 1/2' on right side neck just above the clavicle i.e., super clavicular region.

(2) Incised wound 3 1/2' x 1/2' on right side neck encircling the neck extending 1/2' to middle situated just above the injury No. 1 wound is deep so the internal organ of trachea cut on at level of cricoid cartilage asphyxia cut in upper part with cut on common carotid right artery and juglar vein right were visible.

(3) Incised wound 2' x 1/2' x 1/2 on right side neck. Just above the injury No. 2.

(4) Incised wound 2 1/2' x 1/2' x 1/2' on dorsom of left hand extending to middle finger. Bone visible from wound of 3rd metacarpel present.

Cause of death due to shock and haemorrhage due to cutting of large vessels of neck.

6. The defence of accused-respondent was one of the complete denial and had raised plea of alibi. The learned Trial Court came to the conclusion that the presence of accused in the village on the fateful night was not proved as some of the witnesses had admitted his absence because of going to Kanpur for the last 10-15 days from the incident. Most of the witnesses, whose houses are enclosed to the house of the accused, had turned hostile. Only evidence about identification of the accused on the basis of sounds of quarrel, the evidence of Raja Be ti (P. W.

5) was also found suspicious and in the circumstances, the learned Trial Court vide his impugned judgment and order of acquittal acquitted the respondent-accused, against which the State had approached this Court in appeal seeking redress praying for quashing of the same.

7. The learned Dy. Government Advocate appearing for the State has contended before us that the learned Trial Court has committed grave error in not appreciating the evidence of Raja Beti (P.W. 5), though hostile, who is cousin sister of the deceased and residing in the house just enclosed to the house of the accused. She being in the neighbourhood and related to the accused was quite familiar with his voice and, therefore, her evidence remains unrebutted on this point and goes to establish the presence of the accused on the fateful night. In the circumstances, when there was none else except the widow mother of the accused and deceased persons in the house, a presumption has to be drawn on the basis of this evidence coupled with the fact of absconition of the accused that it was accused and accused alone, who had committed the gruesome murder of his wife and married daughter. The learned counsel of the respondent has contested the argument raised on behalf of the appellant-State and had submitted that in face of other evidence particularly the evidence of Siya Dulari, real elder sister of the deceased, Shyam Sundri, who had not supported the prosecution version, the evidence of Raja Beti was properly not relied upon by the Trial Court. Similarly, the prosecution has failed to examine Investigation Officer and had produced no evidence regarding absconition of the accused. The plea of alibi was found proved from the evidence of prosecution witnesses themselves. In the circumstances, the view taken by the Trial Court is neither perverse nor against the evidence on record.

8. We have considered the rival contentions of the parties and had gone through the evidence on record.

9. Devi Singh (P.W. 3) has given full details as to how the relations of accused with deceased Shyam Sundri became strained after his second marriage with Sukhrani, When Shyam Sundri was turned out from the house by accused, she approached and narrated her tale of painful cruelty with which she was meted out

by the accused. Thereupon a case of maintenance was filed against accused wherein accused orally entered into compromise by offering apology and promised to maintain Shyam Sundri. At that time, her daughter Kamlesh had also joined her and both of them went to Endori for residing with the accused. After about 15 days Pappu s/o Dunni Singh came to inform him that Shyam Sundri and Kamlesh had been murdered by the accused. He thereafter lodged FIR with the police. In cross-examination of this witness, the only fact asked to him was that there is no mention in the FIR about complaints of Shyam Sundri regarding her neglecting by the accused. However, from the perusal of FIR, it is amply clear that the fact of dispute between the deceased and accused over agricultural land and pendency if the case has been specifically mentioned in the FIR.

10. Sarnam Singh (P.W. 9), elder brother of deceased, Shyam Sundri and Ram Naresh (P.W. 12) husband of deceased Kamlesh had fully corroborated in detail the disputes over property as well as cruel treatment of the accused with his wife Shyam Sundri. Ram Naresh has also produced (Ex. P-17) certified copy of the order-sheet dated 14-5-82 passed in Civil Suit No. A/1983 between Shyam Sundri and Bedvi Singh, Jagdevi, Sukhrani and Hem Kuwar, wherein some ex-parte injunction was passed regarding land in dispute. According to this witness, his wife deceased Kamlesh remained for 20 days with her maternal uncle and then joined her mother at Tehri. Kamlesh had also brought her jewellery with her, which were not delivered to him even after her death. This witness was also not cross-examined regarding the property disputes between the parties.

11. Another fact admitted by even the hostile witnesses Shiv Singh (P.W. 1) Om Prakash (P.W. 2) Dulare (P.W. 4), Siya Dulari (P.W. 6) and Jagdevi (P.W. 7), that Sukhrani, 2nd wife of accused had already left the house to reside at her parental village much before the alleged incident. In the circumstances so far as motive of the accused-respondent to murder his wife and daughter is well established from the evidence referred hereinabove.

12. Hostile witness, Shiv Singh (P.W. 1) resides near the house of accused and in between there is open land of about 50 paces. The fact of absence of accused for the last 10-15 days was told to him by the mother of the accused. The dead bodies

were found on the cot lying in the court-yard of the house. He has admitted preparation of spot map (Ex. P-1), which was signed by him. He has further admitted that Siya Dulari (P.W. 6), sister of deceased Shyam Sundri is married to Pratap Singh and while Raja Beti (P.W. 5), cousin sister of the deceased, is wife of Saheb Singh, who is real brother of Pratap Singh, Pappu alias Harish Chandra (P.W. 8) is son of Pratap Singh. Thus the star witnesses are related to the accused and this gives us a clue as to why they have turned hostile and under their influence, other witnesses of the locality including the Chowkidar of the village are not supporting the prosecution.

13. Since it was hot summer at the time of incident, it is quite natural for the people to sleep in the open court-yard of the house. P.W. 2 Om Prakash was sleeping on the roof of his house just adjoining to the house of the accused. Although he has turned hostile and not supporting his police case diary statement wherein he had stated that at about 11 in the night, accused was found going down from his roof. However, he has admitted that one can pass from his roof to the roof of house of the accused.

14. Village Chowkidar P.W. 4 Dulare, though turned hostile but admitted that at that time none except deceased persons and mother of the accused were in the house. At about 6 in the morning, mother of accused had informed him about the incident and fact that accused had left for Kanpur 14-15 days before the incident. It is surprising that according to this witness, he had gone to inform the police at Chowki Gohad Chauraha. However, there is no such police report, as may be lodged by this witness, but what has been mentioned in the police statement is that when he was about to leave for lodging report at Police Station- Endori, the police arrived in the village itself, meaning thereby is that his statement about going to inform police at Chowki Gohad Chauraha, is false.

15. Jagdevi (P.W. 7), mother of the accused had only seen the dead bodies of the deceased Shyam Sundri and Kamlesh, when she woke up in the morning. It is surprising that if she was alone in the house with the deceased ladies, how she could remain sleeping when the ladies were brutally assaulted. In the circumstances, it is clear that the story of accused remaining absent for the last 15-

16 days before the incident and going to Kanpur, had been looked up for supporting the defence.

16. The evidence of Pappu alias Harish Chandra Singh is hearsay and in the circumstances of his turning hostile is of no benefit to either of the parties.

17. Raja Beti (P.W. 5) cousin sister of deceased Shyam Sundri, though turned hostile, but still supporting the prosecution with one aspect of the case that her house is just adjacent to the house of the accused and she had heard the noise of quarrel between accused and deceased Shyam Sundri on the fateful night of the incident. She had not heard such quarrels either before the previous night of the incident or before the incident. It means that such quarrels were heard only on the night of the incident. She was not in talking terms with the deceased Shyam Sundri for the last 2-3 years before the incident. In cross-examination also this witness has stuck to her statement that the noise which she heard in the night of the incident was definitely that of accused Vedri Singh and deceased Shyam Sundri. It has been admitted that she is a Pardanaseen lady and had never talked with the accused nor she had heard accused talking with the other persons. However, it should not be lost sight of that she is related to the accused and intending not to support the prosecution and further being an illiterate and innocent village lady, unconscious of her statement about hearing the quarrels between accused and the deceased, still stuck to her statement regarding noise of quarrel between accused and the deceased. In the circumstances, her consistent testimony despite being hostile to prosecution assumes importance in favour of prosecution and goes to establish the presence of the accused and his quarrel with deceased Shyam Sundri on the fateful night of the incident.

18. The learned counsel for the respondent-accused has urged before us that the evidence of Raja Beti being a hostile witness unless corroborated by other evidence cannot be used for sustaining conviction of the accused. Reliance is placed on a Division Bench decision of this Court in case of Jamna Das v. State of M.P., reported in AIR 1963 MP 106, wherein, it has been held that direct evidence of persons who saw the fact, if that proof is offered upon the testimony of men whose veracity Court has no reason to doubt, is the best proof; but on the other

hand, it is equally true with regard to circumstantial evidence that the circumstances may often be so clearly proved, so closely connected with it, or leading to one result in conclusion, that the mind may be as well convinced as if it were proved by eye- witnesses.

19. Another decision relied upon by the learned counsel is in case of Narsinbhai v. Chhatrasingh and others, reported in AIR 1977 SC 1753, wherein, the evidence of eye-witnesses was found totally unacceptable and, therefore, presence of motive and recovery of blood-stained clothes and dharias, with the accused, were wholly insufficient for sustaining charge of murder, but in our opinion that is not the case here.

20. The learned counsel of the respondent took us through another case of Mulak Raj v. State of Haryana, reported in AIR 1996 SC 2868, based on circumstantial evidence and strong motive for accused to threaten deceased and to pester her by demanding dowry articles, but in that case also, extra judicial confessions by accused, the father-in-law and husband of deceased, were not found believable. The fact that deceased died a homicidal death in household of accused and her dead body was found in kitchen with post-mortem burns, would not by itself connect all accused or any one of them with crime. Further no satisfactory evidence to show whether it was her father-in-law or other accused or whether all of them jointly had taken part in killing her by suffocating her. In such circumstances, it was held that strong suspicion can not take place of proof. Similarly in the case of Bhagwan Dass v. State of Haryana, reported in AIR 1996 SC 2928, where High Court had held one of accused, husband of deceased, alone responsible for murder and convicted him. According to prosecution, not only husband but his parents and brother also ill-treated deceased and wanted to get rid of her. Witness made improvement on one most vital aspect which made presence of accused at place of incident on fateful night doubtful and, therefore, the conviction was set aside.

21. In case of Uday Kumar v. State of Karnataka, reported in (1998) 7 SCC 478, where the reasons given by the Trial Court were totally unsustainable in law. The order of the Trial Court proceeded on mere surmises and conjectures without

assessing the prosecution evidence in a proper perspective. The reliance placed by the Trial Court on the defence evidence to support its reasons for acquittal was totally erroneous as the said evidence is nothing but tailor-made to suit the defence of the appellant. The High Court, on reappraisal of the evidence on record, was fully justified in reversing the order of acquittal. It is not a case where two views were probable. The reasons given by the Trial Court of acquitting the accused were not legally sustainable, and, therefore, it was held that in case of circumstantial evidence, motive is one of the circumstances which assumes importance but if cannot be said that in the absence thereof, other proved circumstances although complete the chain, would be of no consequence.

22. In case of *State of Rajasthan v. Mahavir @ Mahavir Prasad*, reported in JT 1998 (5) SC 274, the deceased, wife of accused and accused were both living together. In circumstantial evidence, broken bangles, dead body lying in the centre of cot, father of deceased informed late and plea of alibi unsupported by any material, it was held that High Court committed error in accepting plea of alibi. Circumstances show that death was neither accidental nor suicidal. Hence Trial Court has rightly convicted for murder.

23. In another case of *Swapanpatra v. State of West Bengal*, reported in (1999) 9 SCC 242, where on the date of occurrence at mid-night, the appellant husband went to the village doctor and intimated that his wife has taken poison and is lying on the verandah. The village doctor rushed to the spot and found the deceased lying on the verandah. He noticed one blood clot on her throat. The doctor who conducted the post-mortem examination categorically came to the conclusion that no poison was detected from the viscera of the deceased and said that the deceased died on account of asphyxia caused by strangulation which was ante-mortem in nature. The question that emerged before the Hon'ble Supreme Court for consideration was whether on these circumstances, it can be safely held that all the appellants are guilty of the charge of murder. Their Lordships of the Hon'ble Supreme Court observed that it is well settled that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain. Applying the aforesaid principle, it be held that the

circumstances established in the case completes the chain of circumstances to prove the charge of murder against the appellant-husband. So far as the other two appellants are concerned, in the absence of any positive evidence even about their presence in the house at the relevant point of time, it is difficult to rope in even if all other circumstances narrated are, established.

24. No doubt, identification of accused by voice can not be severely relied upon, particularly where alleged statement turned out to be unnatural, but that is not the case here because we found the statement of Raja Beti being residing in neighbourhood, just adjoining to the house of accused, quite natural. Identification by voice can be relied upon if the person who is to be identified is intimately known to the person who identifies him. It depends on the degree of intimacy between two. In this case, Raja Beti is not only residing in neighbourhood of the accused, but is also closely related to him as the deceased was her cousin sister. In the circumstances, Raja Beti being hostile, if states that she had no occasion to talk to accused face in face or had seen him talking with others, does not mean that she was not familiar with the voice of the accused. It is pertinent to note that whatever advantage the accused had got by examination-in-chief and cross-examination by prosecution of this witness, was washed off in cross-examination by accused wherein she had repeatedly stated that the voice which she had heard was definitely that of accused and deceased Shyam Sundri and that the accused was present at his house on that day. In our considered opinion, therefore, the evidence of Raja Beti is quite natural, reliable and inspire confidence.

25. Now so far as the question of absconition of the accused and his plea of alibi is concerned, the learned counsel of the respondent has submitted that when the prosecution witnesses themselves admit that he had gone to Kanpur some 10-15 days before the incident and further that since the fact of absconition was not proved by the evidence of Investigating Officer, it cannot be taken to be an adverse circumstance against him. Reliance is placed on the decision of the Apex Court in case of *Thimma v. State of Mysore*, reported in AIR 1971 SC 1871, wherein it has been observed that though the conduct of accused in absconding immediately after the occurrence of the offence is relevant evidence, as indicating to some extent his guilty mind, it is not conclusive of that fact because even

innocent person when suspected may be tempted to such conduct to avoid arrest. In another case of *Matru v. State of U.P.*, reported in AIR 1971 SC 1050, it was observed that the act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Generally the Courts consider it as a very small item in the evidence for sustaining conviction. It cannot certainly be held as a determining link in completing the chain of circumstantial evidence consistent only with the hypothesis of the guilt of the accused.

26. No doubt, in the present case, the Investigation Officer was not produced during trial to prove Panchnama about absconding of the accused after commission of the offence. However, the Trial Court in Para 9 of the impugned judgment has observed that the challan before Committal Court was filed showing accused absconding in the present case. However, during enquiry, he was found arrested in another case of Morena District and he was produced before the Committal Magistrate on the basis of production warrant. There are documents on record showing arrest of the accused in Crime No. 305/80 of P.S. Civil Lines, Morena, under Sections 399, 400 and 402, IPC and under Sections 25 and 27 of the Arms Act. This aspect though not proved by evidence of any Police Officer, however, the Court is bound to take judicial notice of it, goes to prove the fact that the accused was absconding.

27. Now coming to the plea of accused regarding alibi, though this fact has been admitted in evidence by hostile witnesses, Shiv Singh, Om Prakash, Dulare and Jagdevi. From the statements of these witnesses, we find that they are the witnesses, who were won over by the accused and they are admitting the suggestions made by the accused. We attach no importance to such admissions by the hostile witnesses, particularly when no such evidence about plea of alibi was suggested to Devi Singh, Raja Beti, Siya Dulari, Pappu alias Harish Chandra, Sarnam Singh and Ram Naresh, who had come forward to support the prosecution on one point or the other. In his examination recorded under Section 313 of Cr.P.C., though accused has pleaded that he was in Kanpur at that time and later learned about murder of his wife and daughter, but he could not explain as to when he came from Kanpur to his village and for what purpose he had gone

to Kanpur. No evidence indicating his presence at Kanpur at the relevant time was produced in defence. In the circumstances, taking into consideration the conduct of the accused, we are of the opinion that accused was absconding after commission of this offence and was subsequently arrested in another crime by Police-Civil Lines, Morena.

28. Their Lordships of the Hon'ble Supreme Court in the case of Koli Lakhmanbhai Chanabhai v. State of Gujarat, reported in JT 1999 (9) SC 133 have held that it is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base the conviction upon his testimony if corroborated by other reliable evidence.

29. In a similar case of Jalalsab Shaikh v. State of Goa, reported in 2000 AIR SCW 111, where accused alleged to have killed his wife with pick axe. Evidence of witnesses that accused, his wife and son were only residing in one room of house belonging to a witness. That accused used to return to room in drunken condition, assaulting his wife and creating nuisance and further that in the evening the accused and wife had quarreled. On next morning wife of accused was found dead and accused ran away and could be traced only after 10 days. The plea raised by accused that he did not reside in the room was falsified by fact that he did not rush to place of occurrence on knowing the death of wife but had to be searched and arrested by police. This false plea had provided the missing link. Yet in a larger Bench decision in the case of Joseph v. State of Kerala, reported in AIR 2000 SC 1608, the Hon'ble Supreme Court has reiterated that during the time of questioning under Section 313, Cr.P.C. the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court, not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned,

found the missing links to be supplied by such answers for completing the chain of incriminating circumstances, necessary to connect the person concerned with the crime committed.

30. The Hon'ble Supreme Court in the case of State of H.P. v. Lekh Raj and another, reported in (2000) 1 SCC 247, has pointed out the duty of the Courts in appreciating the evidence and observed that the criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the Court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The Courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a Utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The Courts cannot ignore the erosion in values of life which are a common feature of the present system.

Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.

31. The Hon'ble Supreme Court has also expelled the doubts regarding benefit of doubt and has clearly defined its meaning in case of State of Haryana v. Bhagirath and others, reported in (1999) 5 SCC 96, it has been pointed out that of course the expression reasonable doubt, is incapable of definition but the pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt

of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertain doubt regarding the guilt of the accused. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A Criminal Court could be convinced of the guilt only beyond the range of a reasonable doubt. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

32. Taking into consideration the implications arising out of different decisions of the Hon'ble Supreme Court, referred hereinabove, our purpose is to point out the vast change taking place in our criminal jurisprudence and criminal administration of justice. According to the changing scenario of the modern society, 'never before in our Republic's history has violence marked, our national life on a scale so widespread as at present' remarked an eminent Jurist in his book 'We, the Nation - The Lost Decades' and went on 'communal hatred, linguistic fanaticism and regional loyalty are gnawing at the vitals of the unity and integrity of the country. To the growing army of terrorists and professional hooligans, caste or clan, creed or tongue, is a sufficient ground to kill their fellow citizens'.

33. Then the plight of victims and witnesses can be well imagined in a society where a tendency of hero-worship of the criminals has developed and further where law enforcing agency has been demoralised to the extent that it has turned hostile to the very purpose for which it is created. In many of the cases, people fear to lodge a police report and yet, where report is lodged, nobody comes forward to support the prosecution, when in the past everything was done faithfully and in accordance with law and rules, the old views could have been vigorously applied, where FIR itself is suspicious and distorted and the statements witnesses are mechanically recorded in a prototype manners supporting the FIR, which, in fact, is not the real statement of a witness. Thus, the very foundation on which a witness is declared hostile or alleged to have telling a lie because of discrepancies

in his statement before the Court and that of police case diary statement, turns out to be fake or false. It is in such a situation, the Apex Court has called upon the Courts of law, dealing with the criminal matters to forgo old dogmatic approach in appreciating the evidence of the witnesses and to adopt a rational, realistic and genuine approach in given circumstances and in totality of the case. It is true that discrepancies and contradictions are bound to occur in the statement of every truthful witness and, therefore, the Courts should ordinarily avoid smelling doubts on the basis of each and every discrepancy and contradictions arising in his statement unless it goes to the very root of the case and should consider the evidence as a whole in totality of the facts and circumstances of each case.

34. It is true that in a criminal case, the burden to prove the guilt of the accused always lies with the prosecution, but so far as circumstantial evidence is concerned, in many of the cases where the accused is required reasonably to explain certain circumstances appearing against him, in the evidence and where he fails to do so or comes forward with an explanation which is found false after considering the totality of case, such conduct of the accused may be considered and found proved as a missing link in the chain of circumstances of the prosecution story. Here, we may like to point out that such appreciation of evidence should work both the ways i.e., it can be applied for granting acquittal to an innocent person and to see that guilty does not escape punishment.

35. Now returning to the present case, smelling doubts for the sake of giving benefit of doubt and non-consideration of strong circumstantial evidence arising out of conduct of an accused; had led disastrous result. The learned Trial Judge has failed to appreciate the fact that accused had strong motive to commit the crime not only against his wife but also as against his daughter because she and her husband were helping in the cause and stood firm by the side of her mother. The learned Judge overlooked the fact that the witnesses of the vicinity and neighbourhood turned hostile under the influence and due to close relation with the accused. The learned Trial Court also ignored the consistent evidence of Raja Beti, particularly her evidence as emerged trustworthy and inspiring confidence during her cross-examination by the accused. The learned Trial Court completely ignored the fact that except 70 years fragile old mother of the accused and

deceased persons, there was no other male member except the accused in the house. Further, there was no chance for any outsider to intrude inside the house at the relevant time. In the circumstances, a duty was cast upon the accused to explain his presence at the time of occurrence of this heinous crime when his plea of alibi was not found believable and particularly his subsequent conduct in not returning to his house till he was arrested in some other case and produced before Committal Court in custody. Thus, conduct of the accused is well proved as a missing-link in the chain of circumstances of the prosecution story.

36. In totality of the case, for the reasons discussed above, in our opinion, the appreciation of evidence by the Trial Court was wholly not appropriate and it has acted with material irregularity and had taken into consideration inconsequential circumstances to record acquittal of the accused. In totality of the case, therefore, the judgment of the Trial Court is based on erroneous findings of facts, therefore, not sustainable and deserves to be quashed.

37. For the reasons stated hereinabove, the offence under Section 302, IPC for murder of his wife and daughter is found well proved against the respondent and, therefore, the appeal is allowed and the impugned judgment and order of acquittal is set aside and the respondent-accused is held guilty of offence under Section 302, IPC and sentenced to imprisonment for life. He will surrender to his bail bond before the Chief Judicial Magistrate, Bhind within a fortnight from this order or else steps be taken to issue warrant of arrest and to recover the amount of security from the sureties.

38. Criminal Appeal allowed.