

indrakumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-16-1996

Reported in : I(1996)DMC638

Judge : R.D. Shukla and ;N.K. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 309 and 498A; [Evidence Act, 1872](#) - Sections 8

Appeal No. : Cri. Appeal No. 452 of 1988

Appellant : indrakumar

Respondent : State of M.P.

Judgement :

R.D. Shukla, J.

1. The appeal is directed against the judgment and order dated 6.9.1988 of the Sessions Judge, Indore passed in S.T. No. 247/83 whereby accused-appellant has been convicted Under Section. 302 IPC for having committed murder of Meerabai on the intervening night of 3rd and 4th August, 1983 at Larkana Nagar, Indore and sentenced to imprisonment for life. He is further convicted Under Section 309 IPC for having committed attempt to suicide and sentenced to imprisonment till rising of the Court. (Accused has been acquitted of the offence

Under Section 506 IPC for having caused intimidation to Meerabai).

2. It is not in dispute that Meerabai (deceased)-daughter of (P.W.I) Sunderlal r/o Tagore Colony, Khandwa, was married to accused-appellant Indrakumar. Indrakumar was living in the joint family house consisting of his brother Laxmichand, his wife Madhubai, father Gulabrai and his wife (mother) Ishwaribai. They have got a multi-storied building. The married members of the family were living in separate blocks. Meerabai was married to accused-appellant on 29.6.1980.

3. The prosecution story in brief is that accused-appellant and his other members of the family were practising cruelty by causing ill-treatment to Meerabai. At the initial stage after marriage Meerabai lived for about 2 months alongwith the accused. She was taken by her parents to Khandwa. She again returned to Indore. Meerabai gave birth to a male child in June, 1983. Sundarlal and his wife (parents of Meerabai) participated in the birth-ceremony of the child.

4. Accused appellant was living in one portion of second storey of the building. In other portion of the same storey Gopichand, elder brother of Indrakumar was residing with his wife Kalabai (P.W. 12).

It is alleged that the accused committed murder of Meerabai by strangulation and thereafter attempted to commit suicide by hanging himself. On hearing the cries and weeping of the child Kalabai and all other members of the family were awoken. They found accused hanging and Meerabai dead on the bed. Accused was taken out and Meerabai was taken to T. Choith Ram Hospital, Indore. Dr. R.S. Patel (P.W. 2) examined the body and declared her to be dead. The matter was reported to the Police. Anokhilal Choudhary (P.W. 14), Sub-Inspector Police Station Juni Indore came alongwith Ambulance and took the dead-body to M.Y. Hospital, Indore. He also informed Police Station for registering Marg. Head Constable Mohansingh, on instruction registered Marg No. 33/83 Under Section 174 Cr.P.C. The body was kept in the mortuary under the instructions of the Police Officer. Police Officer Anokhilal Choudhary (P.W. 14) collected witnesses after issuing notice vide Ex. P/2 to them at about 11 a.m. on 4.8.1983 and prepared inquest report: Ex. P/I. He further made a request for post-mortem examination of

the dead-body vide Ex. P. 18.

5. Dr. Ravindra Choudhary (P.W. 7) conducted autopsy on the dead-body of Meerabai alongwith Dr. Hanotiya and found following ante mortem injuries :

1. Ligature mark below crecoid cartilage encircling neck. It is faint on left side at posterolateral side. Base of ligature mark is dark redish with echymosed margin. Ligature mark measures 12.5 inches in diameter and $\frac{3}{4}$ cm. breadth on Rt. side of neck whereas $\frac{1}{2}$ cm. on Lt. side (it appears circumference rather diameter).

2. Abrasion with red clotted blood on Rt. of neck, 2' below Rt. angle of Mandible and it is 2' away to mid line. It measured 1 cm. in length and linear in breadth lying vertically.

3. Septic wound 1 cm. in diameter and deep upto skin at distal phalanx, palmer aspect of Rt. ring finger.

4. Contusion Rt. fore-arm at centre of ulnar border horizontally placed 1' x ' bluish in colour.

5. Abrasion Rt. Thumb, palmer side, distal phalanx, 1 cm. x $\frac{1}{4}$ cm. vertically placed.

On dissection of ligature mark there was extra vagation of blood in subcutaneous tissue under ligature mark. It was spreading on adjacent muscles. On further dissection there was fracture of 2nd and 3rd tracheal ring on frontal side with congesion. All injuries and ligature mark of neck were ante-mortem and were caused within 24 hours from examination.

6. In the opinion of two doctors Meerabai died of asphyxia due to strangulation.

7. Viscera of deceased was kept preserved and clothes of deceased i.e., Maxy, Breasier, Petticoat and underwear were seized and sent to Police in a sealed bundle.

8. On receiving this information Anokhilal Choudhary (P.W. 4) registered an offence Under Section 302, 306 and 201/34 IPC vide Crime No. 581/83. The case

was registered against accused-appellant and four other persons i.e. Laxmichand S/o Gulabrai, Madhubai W/o Laxmichand, (elder brother and sister-in-law of accused) Gulabrai S/o Sumbhamal and Ishwaribai W/o Gulabrai (father and mother of accused).

9. Prior to making a request for post-mortem examination photographs of Meerabai (Exs. P/34, 35, 36 & 37) were taken by Government Photographer Bhagirath Patel (P.W. 16) under the instructions of Police Officer. Thereafter Bhagirath took photographs of the room, ceiling fan and bed where from the body of Meerabai was taken vide Ex. P/38 to Ex. P/47.

10. P.W. 15 Dhairyashil Rao Changad conducted investigation of the case as there was some agitation by Sindhi Community. This witness sealed the room and prepared Panchnama Ex. P/24. P.W. 1 Sunderlal, father of deceased produced letters Exs. P/4, P/8 and Ex. P/9 which were seized vide Seizure Memo Ex. P/10. Accused-appellant was arrested vide Memo Ex. P/27. The other accused persons were arrested vide Exs. P/28, P/29, P/30 and P/31.

11. Accused-appellant Indrakumar gave information about nylon rope and white Dupatta vide Ex. P/19. The same i.e. Dupatta Article 'C' Rope Article 'D' were seized at his instance vide Ex. P/22. After Panchnama of opening the room vide Ex. P/20, Shri Rao (P.W. 15) prepared site map Ex. P/21 and described various articles including [seizure of nylon rope and] pieces of nylon rope on the bed and on the ceiling fan. The roof was found nearly 9' in height and the bed was about 1 1/4' in height. The ceiling fan was over hanging on a hook which was 3' in length. Shri Rao (P.W. 15) seized two pieces of nylon ropes and seized them vide Ex. P/23. He further got the map prepared from Patwari. One exercise book Ex. P/12 was also seized vide Exs. P/11 on production by Sunderlal (father of deceased). Three Inland Letters Ex. P/5, Ex. P/6 and Ex. P/7 and one letter written in exercise-book were also seized as above.

12. The letters seized and allegedly written by Meera (Ex. P/4, Ex. P/5, Ex. P/6, Ex. P/7, Ex. P/8, Ex. P/9,)were sent alongwith exercise-book Ex. P/12, for examination by Hand-Writing Expert. A report Ex. P/33 was obtained which disclosed that letters were written by the same person who has written in the

Exercise-book Ex. P/12.

13. The report of the Chemical Examiner about viscera was also obtained. It shows absence of chemical poison in viscera.

14. Police Officer sent Indrakumar for medico-legal examination with a letter of request. He was examined by Dr. Virange (P.W. 5) who found as follows :

(i) Red interrupted (on back) contusion starting from mid point of left sterno mastoid muscle encircling laterally backwards upwards at the nape of neck crossing right side descending in the centre of neck in anterolateral area on the Rt. side then suddenly taking the course upwards at the notch of thyroid cartilage and crossing upwards ending at the angle of Lt. mandible measuring 13 1/4' x 1'. Under the chin purplish red contusion 1/3rd on Rt. side and 1/3rd on left side.

(ii) Abrasion at the Rt. wrist 1/2' below pisiform bone on the flexor aspect of Rt. forearm. Blood present 1/8' x 1/8'.

Injury No. 1 was caused by blunt object while injury No. 2 was caused by hard and pointed object within 24 hours. The injuries were simple in nature.

According to Dr. Virange injury No. 1 as found on the body of accused could be caused while attempting to commit suicide with the help of a rope. Injury No. 2 could be caused by handcuffing the accused. Dr. Virange prepared Report Ex. P/17.

15. After investigation challan was presented against accused-appellant and four other accused persons i.e. Laxmichand-Madhubai, Gulabrai and Ishwaribai. Ishwaribai died during the trial of case and, therefore, four persons faced the trial.

16. Accused persons denied the guilt and pleaded that: Meera Bai committed suicide, indrakumar pleaded that he sustained injury on the neck by a rope stretched in the court-yard for drying up the clothes.

17. Learned Trial Judge has acquitted three accused i.e. Laxmichand, Madhubai and Gulabrai and convicted and sentenced the accused-appellant as above. Hence this appeal.

18. The contention of learned Counsel for appellant is; (i) the fact of homicidal death of Meerabai has not been proved and possibility of suicidal death cannot be ruled out; (ii) that injuries found on the body of accused Indrakumar could be caused by coming into forcible contact with the stretched rope in the court-yard.

The presence of accused in the room or in the house at the time of incident is not established and, therefore, inference about his complicity in the crime can not be drawn.

19. As against it learned Counsel for State while supporting the judgment of learned Trial Judge, has submitted that homicidal death is proved beyond reasonable doubt as the homicidal death occurred in the bed-room occupied by the accused and deceased Meerabai, a natural inference in the absence of an explanation has been drawn that accused committed murder.

20. We were taken to the evidence on record.

It is an established principle of criminal jurisprudence that for basing a conviction on circumstantial evidence it has to be seen that the chain of circumstances is so complete that it is not only consistent with the hypothesis of the guilt of the accused but is totally inconsistent with the hypothesis of the innocence of the accused and, therefore, the evidence adduced in the case will have to be examined keeping in view this principle of criminal jurisprudence.

Now, the most important point that requires determination in the case is, as to whether the death of Meerabai was homicidal or suicidal as contended by the learned Counsel for defence. Dr. Ravindra Choudhary (P.W. 7) who conducted the post mortem examination alongwith Dr. Hanotia, has unequivocally opined that Meerabai died of asphyxia due to strangulation vide Report Ex.P/18. During cross-examination Dr. Choudhary has made a casual admission in para 18 that definitely it cannot be said that it was a case of hanging or strangulation. Dr. Choudhary has admitted in para 24 of his statement that he agrees with the Modi's observation in the Book of Medical Jurisprudence and Toxicology- Twenty-first Edn.-3rd Print at Page 202 about the differences between hanging and strangulation which has been given in a tabulated form. The same has been discussed by the learned Trial

Judge in paras 27, 28 and 29 of his judgment. The same is not required to be repeated by us. Learned Trial Judge, after considering the literature has given a definite finding in para 32 of his judgment that the death of Meerabai was homicidal.

21. In suicidal death apart from other things two very important signs in the body are generally found : (i) neck, stretched and elongated in fresh bodies. In this case the body was fresh body. Meerabai was immediately taken to hospital. The neck was not found elongated. At Note No. 3 saliva, dribbling out of the mouth down on the chin and chest is to be found. But none of this sort was found.

22. Learned Counsel for defence has vehemently argued on the basis of statement of Dr. Choudhary that the fact of death by hanging and thereby suicide cannot be ruled out and, therefore the accused is entitled for benefit of the same.

23. We were taken to the findings as noted by Dr. Choudhary and Dr. Hanotia. Signs noted including the injuries, do indicate the fact of strangulation. As observed in earlier paragraph, ligature mark below cricoid cartilage was found encircling the neck. Injuries Nos. 2, 4 and 5 were fresh injuries. There was absolutely no possibility of injury like this in the case of hanging.

24. Apart from this we have perused the photographs Exs. P/34, P/35, P/36 and P/37 taken and proved by the Govt. Photographer Bhagirath Patel(P.W.. 16) as referred earlier. Ex. P/37 very clearly shows the ligature mark around the neck. Dr. Choudhary, as referred in earlier para, found extra vasation of blood in subcutaneous tissue under ligature mark and further found fracture of 2nd and 3rd tracheal ring on frontal side. This also goes to prove that the death was by strangulation which is homicidal.

25. P.W. 14 Anokhilal Coudhary has also stated in para 1 of his statement that while preparing inquest report he detected the scratch marks on both part of the neck and nail mark and ligature mark 4' in length and also found some bluish mark on the cheek and abrasions on the back of the left ear, finger and wrist joint of left hand. This also goes to show the signs of struggle, which shall be found only in case of strangulation (homicidal in nature) and not in case of hanging.

26. The photographs Exs. P/38, P/39 and P/40, as proved by Govt. Photographer Bhagirath Patel (P.W. 16) do indicate signs of struggle and so the pieces of nylon rope. Similarly Ex. P/45 also shows the sign of struggle. Had it been a case of hanging all these signs of struggle would not have been found on the bed, on the body and around the bed inside the room.

27. Learned Counsel for defence has led much stress on the statement of P.W. 12 Kalabai, sister-in-law i.e. elder brother's wife of accused (hostile witness) who has stated that on hearing the sounds and cries of the child she went to the bed-room of accused and Meerabai and found Meerabai hanging in the room with a rope attached and tied with the ceiling fan. She is a close relation of accused, she is definitely interested in saving the accused. She stands contradicted from her police-statement and, therefore the fact of Meerabai being found hanging with the ceiling fan cannot be accepted and has rightly been rejected by learned Trial Judge.

28. In our considered opinion, therefore the fact of homicidal death of Meerabai by strangulation has been established beyond reasonable doubt and the same has rightly been found by the learned Trial Judge.

29. This is not in dispute that accused and Meerabai were living together in the bed-room wherefrom the dead-body of Meerabai was taken by her relations to T. Choithram Hospital. There is neither the evidence to show nor it has been contended that there was any difference or accused was sleeping in any other room. Kalabai (P.W. 12) (hostile witness and near relation of the accused) has also admitted the fact that accused and Meerabai were residing in the same room and were using the bed as has been shown in the photographs referred above.

30. Learned Counsel for defence has submitted on the basis of statement of hostile witness Kalabai that accused was away in the factory and was not present in the house or in the room at the time of occurrence. We do not agree with this contention of learned Counsel as the factory is situated within a distance fifteen minutes walk from the residential place and the house wherefrom the dead-body of Meerabai was found and taken as above. This witness has also admitted that at about 11 p.m. after coming to bed-room she closed the door from inside and

awoke after hearing the cries of child. Thus, on the basis of statement of Kalabai it cannot be accepted that accused was not present in the house or in the bed room. Even otherwise as admitted by Kalabai in paragraph 5 of her statement that the factory is situated within 15-20 minutes of walking distance from the residential house. Thus, it cannot be said that accused was present or was working in a place which was so distantly placed that it was impossible for him to have reached the place of occurrence at the time alleged by the prosecution.

31. Where a married couple is residing in a house it shall be presumed that both were present in the room in the dead-hours of the night. Though this presumption is rebuttable but the burden of explanation would lie on the party who wants the Court to believe otherwise.

32. Courts, while appreciating and scrutinising the evidence, can always take the help of common experience of life. Though it is also true that the conviction cannot be based on the basis of surmises and conjectures. The prosecution is required to prove the circumstances leading to the complicity of the accused with the crime positively. But while proving such fact if one part of it is proved or admitted certain presumption can be raised and inference can be drawn from the facts so proved.

33. According to Dr. Ashok Virange (P.W. 5) who has examined accused Indrakumar and found the injuries as referred above, injuries could be caused while attempting to commit suicide. We are not convinced with the contention of learned Counsel for appellant that the injuries found on the neck of the accused were caused by coming into forcible impact with the stretched nylon rope in the court-yard. In that situation the shape of injury would be absolutely different. The same would not be around the neck and even if some-body comes in the forcible impact of stretched nylon rope he will be pushed back because of the elastic reaction of the rope and in such a situation injury as found on the body of Indrakumar could not be caused.

34. It may also be observed here, that had it been a case of suicide by hanging of Meerabai there was no reason as to why the accused would try to commit suicide. This conduct of accused also goes to help the theory of homicidal death of Meerabai. This further goes to show that accused Indrakumar was present in the

room at the time of homicidal death of Meerabai. In such a situation burden of explanation would lie on the accused to show as to how Meerabai met with homicidal death i.e. by strangulation.

35. P.W. 1 Sunderlal (father of Meerabai) has stated about the expenses incurred by him during the marriage of Meerabai and about the visits of husband's house and parental house. He has stated that she narrated to him and other members of the family that she is being ill-treated in her in-laws family. She is put to trouble and not provided medical assistance. He has further stated that he collected some members of the community for persuading Gulabrai regarding good behaviour. He has also stated that on telephonic talk Meerabai had told about ill-treatment and misbehaviour.

He has further stated that Laxmichand, elder brother of Indrakumar on one occasion confined her in a room for 15 days. In para 15 of his statement, this witness has stated that after delivery of child Meerabai complained about ill-treatment and service of food in the room like a dog. He has proved letters Ex. P/ 3, Ex. P/4, Ex. P/5, Ex. P/6, Ex. P/7, Ex. P/8 and Ex. P/9 and stated that the same has been seized on 14.8.1983 and 18.8.1983. These letters were written by his daughter Meerabai. There was a caste-panchayat where demand of some more dowry was made but he refused to oblige Indrakumar and in-laws of Meerabai as he had already given sufficient and according to his capacity.

36. Sunderlal is the father of deceased. His daughter Meerabai died as above. This must have caused some annoyance and anguish to him. Thus, there is possibility of his exaggerating the fact of cruelty and misbehaviour. Under the circumstances it would be proper to look to other independent evidence available.

37. P.W. 3 Arunkumar Chatarji has stated about the fact of dowry and gold having been given by Sunderlal and has further stated that he has family relations with Sunderlal and for this reason Meerabai has been coming to meet his wife. He has then stated that on one occasion Meerabai has told him about the ill-treatment by in-laws and husband including beating, misbehaviour, man-handling and demand of dowry. He has also stated that about 4-5 months before death Meerabai told about the ill-treatment and asked for legal assistance. He, therefore, replied that

she is pregnant and is likely to give birth to a child, things would be settled after birth of the child. He has also stated about the treatment taken by Meerabai from Dr. Shastri and examination of abdomen because of injury on the abdomen.

This witness Arunkumar Chatarji (P.W. 3) is an independent person. He is Advocate by profession. He is nowhere related to Sunderlal. Thus, there is no reason as to why this witness will tell a lie against the accused. Thus, the fact of ill-treatment and misbehaviour by accused and his parents and brother, as stated by Sunderlal stands corroborated from the statement of Arunkumar Chatarji. A similar statement about misbehaviour, beating and ill-treatment with Meerabai has been given by Shivlal Lakhwani.

38. P.W. 8 Kandrabai has also given statement about ill-treatment and demand of dowry. She appears to be a relation of Sunderlal and is likely to exaggerate the story. P.W-9 Trilokchand has also stated about mis-behaviour, ill- treatment and manhandling by the accused at the instance of parents and brother-in-law and sister-in-laws of Meerabai. Though, this witness is also a relation as being the elder-sister's husband of Meerabai but there is no reason as to why he will create a false story of disclosure of ill-treatment with Meerabai.

39. There is yet another witness P.W. 11 Dayaram, who is one of the office- holder of Sindhi Samaj. He has stated about the complaint being made by Sunderlal about ill-treatment by husband and in-laws of Meerabai. He appears to be an independent person. From his statement Sunderlal stands corroborated.

40. From the statements of above witnesses corroborated by independent witness P.W. 3 Arunkumar Chatarji and P.W. 11 Dayaram it stands proved beyond reasonable doubt that Meerabai was ill-treated, often man-handled by accused and there was demand of dowry as well.

41. Learned Counsel for defence has laid much stress on the statement of P.W. 12 Kalabai (a hostile witness and the sister-in-law of accused, who has tried to prove the alibi of accused). The same has been discussed in earlier paragraph but this witness has stated (which has not been challenged) that accused and his wife (deceased Meerabai) and child were living in the room of second floor. This fact

has not been challenged. This goes to prove that as usual accused and Meerabai were the sole occupants of the room concerned where Meerabai was found dead. Her assertion about the alibi is not reliable (as discussed in earlier paragraphs) as the alleged factory is within 15 minutes walk from the place of occurrence. Thus, following facts stand proved beyond reasonable doubt:

(i) Meerabai was ill-treated by accused and his other relations i.e. parents, brother-in-law and sister-in-law;

(ii) Meerabai was beaten and man-handled at many times;

(iii) Meerabai did not know work of cooking properly and she was being served food in her own bed-room and was being dishonoured;

(iv) Accused and Meerabai alongwith small child were the sole occupant of the room where Meerabai was found dead;

(v) Meerabai died of homicidal injuries;

(vi) Accused tried to commit suicide. This further goes to show the presence of accused at the time of occurrence;

The plea of alibi fails. There was absolutely no reason as to why accused should remain in the factory at the dead hours of the night.

(vii) There was motive for murder as accused wanted to get rid of his wife who even did not know cooking and other house-hold work.

(viii) Accused was residing in second floor. Nobody else could have entered in the bed-room except the accused or other members of the family. Had the murderer been a person outside the family, there must have been resistance, hue and cry; members of the family including the accused must have raised alarm and tried to arrest the murderer. Had there been intrusion by anybody else other than the husband, wife (deceased) must have resisted and raised alarm. It is the accused who was the husband of deceased, had easy access to the bed-room and to the bed of the deceased.

(ix) Nobody else including members of the family or persons working in the factory have stated about the presence of the accused in the factory at the time of occurrence i.e. about 11-12 in the night.

42. Every human being, nay every creature, has got a fundamental instinct of self preservation and whenever there is a threat to life the person would react and try to resist.

43. In this case murder must have been committed by a person who has easy access inside the house and the room and the easiest access to the bed-room would be available to the husband (in this case present accused-appellant Indrakumar).

44. Had the murderer been a person other than the husband, it would have been difficult for him to reach the bed-room and to cause strangulation without sufficient-resistance. From the evidence and specially the photographs produced in the case, it appears that the deceased was killed while she was lying on the bed and was strangled in that position and it was for this reason that the resistance was much less. No body else other than the accused could have got that opportunity of causing strangulation inside the bed-room situated on the second floor of the house; specially when ground floor and first floor are occupied by other members of the family.

45. In such a situation where husband and wife who are the two occupants of the house and one of them meets homicidal death, burden lies on the surviving member to explain as to how the person who died as such met with homicidal injuries. In the absence of any reasonable and cogent explanation an irresistible conclusion would be drawn that the other surviving member is the murderer.

46. Though it is true that burden lies on the prosecution to prove the circumstances leading to irresistible conclusion of the guilt against the accused but where prosecution proves certain circumstances leading to complicity of accused in the crime and the same remains unrebutted, certain reasonable inference in the facts and circumstances of the case so proved, can always be drawn.

47. In this case, there is motive for murder, Meerabai met homicidal death in the bed-room, accused tried to commit suicide in the bed-room which shows the presence of accused in the room, there were marks of struggle in the room and there was absolutely nothing to show as to how Meerabai met with homicidal death. In such a situation the only irresistible conclusion that can be drawn is that accused and accused alone was the murderer and it has rightly been held so by the learned Trial Judge.

48. Learned Counsel for defence has referred to a case reported in AIR 1984 SC 1622 (Shared Birdichand Sarda v. State of Maharashtra) with special reference to paragraphs 151, 162 and 163 and submitted that the case cannot be accepted to have been proved beyond reasonable doubt. In paragraph 151, a passage of Hanumant's case (Hanumant v. State of M.P., AIR 1952 SC 343) has been quoted which reads as follows:

'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 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 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. In other words there must be a chain of evidence so far complete, as not to leave any reasonable ground for 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.'

We are in respectful agreement with the law enunciated therein. But in this case as observed in earlier paragraphs that the facts and circumstances proved in the case lead to an irresistible conclusion that accused and accused alone is the murderer.

49. Learned Counsel thereafter referred to a case reported in AIR 1972 SC 922, Khatri Hentraj Amulakh v. The State of Gujarat. In that case, the fact that the accused was alone with the deceased at the time of occurrence was not found proved. This is not the case here.

50. Learned Counsel thereafter referred to a case reported in AIR 1963 SC 74, Raghav Prapanna Tripathi and Ors. v. State of Uttar Pradesh; with reference to annotation '(b)' which reads as follows :

'Where the entire case against the accused depends on circumstantial evidence, any circumstance which destroys the presumption of innocence, if properly established, can be taken into account to find out if the circumstances lead to no other inference but of guilt. Thus, what the Court has to see is whether taking the totality of circumstances which are held to have been proved, it can be said that the case is established against the accused, i.e., the facts established are inconsistent with the innocence of the accused and incapable of explanation on any hypothesis other than that of guilt.'

We are in respectful agreement with the pronouncement of law by the Apex Court as above. But as observed in earlier paragraph in this case, accused and his wife Meerabai were the sole occupants of the room, where Meerabai was found dead with homicidal injuries and therefore, in the absence of any explanation no other inference can be drawn.

51. Learned Counsel thereafter referred to a case reported in AIR 1992 SC 758, Sakharam v. State of M.P., we are in respectful agreement that where defence of alibi and suicide raised by the accused fails, the same cannot be taken to be a circumstance against the accused. In this case the fact of occupation of the room by the accused and the deceased at the time of occurrence and the presence of the accused at the time of occurrence has been found to be proved beyond reasonable doubt and, therefore, the case referred does not help the accused in any way.

52. Learned Counsel thereafter referred to a case report in AIR 1991 SC 1674, Inderjit Singh and Anr. v. State of Punjab. That was a case where prosecution tried to prove the fact of deceased being last seen in the company of the accused but in the absence of motive and enmity with the deceased the circumstance was not found to be sufficient to connect the accused with the crime. Learned Counsel thereafter referred to Raghav Prapanna Tripathi's case (supra). That was a case with special facts. The body of deceased and the vehicle used for carrying was

never found and therefore, a missing link in the proof of guilt was accepted and the accused was given benefit of the same. In our opinion, therefore, this case also does not help the accused in any way.

53. From the circumstances proved against the accused we are convinced that accused committed murder of Meerabai and thereafter tried to commit suicide. Other members of the family tried to save him by distorting the facts.

54. Now in view of the pronouncement by the Apex Court as reported in AIR 1994 SC 1872, State of Punjab v. Balbirsingh, it has been held that attempt to commit suicide is not a punishable offence. We are bound to accept that verdict and, therefore, we set-aside the conviction and sentence imposed on the accused Under Section 309 of IPC.

55. As a result, the appeal partly succeeds. Though the accused attempted to commit suicide but the same is adjudged to be not an offence, we refrain to pass any order of conviction and sentence on the accused and the sentence imposed to that extent is set-aside.

56. So far as the conviction of the accused-appellant Under Section 302 IPC and the sentence imposed on him are concerned, the same stand affirmed and the appeal stands dismissed.

The accused is on bail. We, therefore, direct him to surrender before the Chief Judicial Magistrate, Indore, for undergoing the sentence on or before 24th of January, 1996.