

**Shyam Sunder Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-18-1996

**Reported in :** 1997CriLJ35

**Judge :** P.K. Bahri and; Mohd. Shamim, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 8 and 138; [Indian Penal code, 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 177 of 1992

**Appellant :** Shyam Sunder

**Respondent :** The State

**Advocate for Pet/Ap. :** K.B. Andley and; R.D. Jolly, Advs

**Judgement :**

**Mohd. Shamim, J.**

(1) CONVICT/APPELLANT (hereinafter referred to as the appellant in order to facilitate the reference) through the present appeal has challenged his conviction recorded by an Additional Sessions Judge vide judgment and order dated July 31, 1992 and August 18, 1992.

(2) It would be just and proper to refer to a few facts which led to the present appeal before embarking upon a detailed discussion of the questions of law and facts which arise for decision in the present appeal. Hc Pratap Singh (Public Witness 9) was posted at Police Station Anand Parbat in December 1987. He Along with Constables Rajbir (Public Witness 14) and Rambir was on his usual patrol duty in the area of Ps Anand Parbaton December' 8, 1987 in the evening. While they were remaining to the police station they passed by the side of house No.'A-74, 'Punjabi Basti, Baljit Nagar, Delhi at about 11.00 P.M. A girl known as Om Wati (PW 5) who was standing on the gate of the said house called them. They immediately responded to the call. Om Wati informed them that a dead body 'was lying inside a room of the said house. Consequently they entered 'the said room and found that a dead body was lying on a wooden cot (Takht). Public Witness 9 thereupon leaving the above said two constables at the place of occurrence to guard the spot, went to inform the police on telephone. After having done so he returned to the place of occurrence. Shortly thereafter, Si Sharwan Kumar (Public Witness 15) Along with Constable Prem Pal (Public Witness 13) reached there. Public Witness 15 Si Sharwan Kumar recorded the statement of Om Wati (vide Ex. Public Witness 5(A). According to her, she was a resident of House No. 29,'254, Trilok Puri, Delhi. Her relations were stained with her father i.e. Public Witness 3 Mauji Ram. Hence she left her house in dejection near about 8 or 9 days ago. It was in the above circumstances that she was standing at Laxmi Nagar bus stand. One Subhash (hereafter referred to as the deceased) for the sake of brevity) also reached there with a view to catching a bus. They fell to talking to each other. During the course of their conversation he asked bey as to where she was going. Where upon she replied that she did not have any place to reside. On hearing the same the deceased agreed to keep her. He brought her to a shop of a goldsmith known as Shyam Sunder, appellant. The deceased requested the appellant to arrange for a house., The appellant and his servant took both of them to the house alluded to above. The appellant provided them with a room in the said house.

(3) Three or four days thereafter the appellant Along with his servant i.e. the co-accused Uma Shankat (since dead) called on her. They induced .her to come, Along with them and to desert the deceased as they were in a position to maintain

her better than the deceased. The said proposal did not find favor with her.

(4) The appellant again visited her on December 7, 1987 Along with the above-named servant during the day time in the absence of the deceased. The appellant at that time had brought two plastic containers and told her while handing over the same to her that they contained a Chemical for cleansing of silver and if she wanted she could cleanse her anklet (Pazeb). She took ( the said containers and kept them in an a^mirah. The appellant and his servant i.e.. Uma Shankar again? persuaded her to come alones with them and told her 'they would manage the deceased'. Even- then she did not accede to-their request.

(5) The appellant Along with his servant i.e. deceased Uma Shankar again, came to meet her on December 8. 1987 around 10.30A.M. She entertained, them with. tea. The appellant took out certain tablets out of his pocket. He handed over four tablets to the deceased out of the said tablets. While doing so, he informed the deceased that he' and his servant bad already taken the said tablets 'and the said tablets en being Taken would cause intoxication and this would give a lot of pleasure and enjoyment. On persuasion of the appellant the deceased took the same and lay on the said wooden cot., The deceased thereafter said that he was feeling intoxicated. He then asked for some water to drink. The appellant then asked Uma Shankar deceased (co-accused) to provide the deceased with water from the said plastic containers. Uma Shankar took out the said containers and transferred the water there from to a steel glass and gave the said glass to the appellant who on his turn made the deceased to drink the water (meant for cleansing of silver). ^ She thereupon objected to the same and asked the appellant as to what he was doing The appellant thereupon threatened her with a trident (TRISHUL). Uma Shankar deceased caught hold of her and made her sit on a sofa. After having taken the said water the deceased writhed with pain and after some time he died. She felt very much frightened as the appellant and coaccused Uma Shankar threatened her. They told her that they would dispose of the dead body and in case she informed anyone in their absence she would be done to death. Having said so they left. She sat outside the gate in a perplexed and embarrassed position. It was at that time that she saw some policemen and brought these facts to their notice.

(6) Si Sharwan Kumar (Public Witness 15) sent the said statement Along with his endorsement (Ex. Public Witness 15/A) to the police station for registration of an F.I.R. through Constable Prem Nath. On receipt of the said information Public Witness 11 Asi Sat Pal recorded the formal F.I.R. vide Ex. Public Witness 11/A. A copy of the said F.I.R. was sent back through the said Constable to Si Sharwan Kumar (PW 15) for the purposes of investigation. The crime team was summoned to the spot. Photographs of the place of occurrence were taken by Public Witness 8 Hc Raghbir Singh (vide Ex. Public Witness 8/1 to 5 and Ex. Public Witness 8/6 to 10). I.O. seized the plastic containers steel glass, a strip of tablets and the trident (Ex. P1 to Ex. P 5). He took the same into police custody vide seizure memo Ex. Pw 5 IB. He prepared the site plan of the place of occurrence (vide Ex .PW 15/B). Inquest proceedings were conducted the Ex. Public Witness 15/C, D and E. He recorded the statements of the prosecution witnesses, namely Bishambar Dayal and Maan Singh. during the inquest proceedings (vide Ex. Public Witness 1/DA and Ex. Pw 6/DA, Db and DC). He further recorded the statements of other prosecution witnesses. The body of the deceased was sent through Hc Pratap Singh and Constable Prem Lal for the purposes of post mortem to the mortem (vide Ex. Public Witness 15/F). Post mortem on the dead body of the deceased was conducted by Dr. L. T. Ramani. His report in this regard is Public Witness 16/A and A Ex. Public Witness 15/K). The articles alluded to above i.e. the glass and the plastic containers and the viscera of the deceased (Ex. P1 to Ex. P3) were sent to the C.F.S.L. for Chemical analysis. The report of the Chemical analyst is Ex. Clause On Chemical analysis they were found to contain traces of potassium cyanide. Similarly, viscera of the deceased also gave positive test for cyanide. The report in connection therewith is Ex. Public Witness . The appellant and the co-accused Uma Shankar were arrested. Their persons were searched vide Ex. Public Witness 4/A and Ex. Public Witness 4/B. They made disclosure statements vide Ex. Public Witness 15/G and Ex. Public Witness 15/H.

(7) After completing the investigation a charge sheet was submitted before the Magistrate concerned who on his turn coming to the conclusion that the offence was exclusively triable by the Court of Session committed the appellant Along with his co-accused Uma Shankar, who died during the pendency of the trial, to the said Court to stand their trial under Sections 302/34 of the Indian Penal Code.

(8) 'THE defense as set up by the appellant in his statement recorded under Section. 313 Criminal Procedure Code . is that he is an innocent person and has been falsely implicated.

(9) The learned Sessions Judge after the appraisal of the evidence, documentary as well as oral, came to the conclusion that the prosecution has proved beyond any shadow of doubt the charge leveled against the appellant and thus held him guilty under Section 302/34 of the Indian Penal Code and sentenced him to undergo Ri for life with a fine of Rs. 10,000. On failure to clear the fine the appellant was further directed to undergo simple imprisonment for ten months.

(10) Learned counsel for the appellant has assailed the findings of the learned lower court, inter alia, on the grounds that the learned lower court, was not correct in placing reliance on the solitary statement of Public Witness 5 Smt. Om Wati. Admittedly, she is a lady of loose and licentious character. Hence it was highly unsafe to have believed her in the circumstances of the present case. If her statement in view of the above circumstances is to be ignored then there is absolutely no evidence worth the name on record to warrant a finding of conviction against the appellant. There was absolutely no motive whatsoever on the part of the appellant to have committed the murder of a person who was an acquaintance and almost a friend of the appellant.

(11) Learned P.P., Mr. R. D. Jolly has urged to the contrary.

(12) It is in the statement of Public Witness 5 Smt. Om Wati. that the appellant and co-accused Uma Shankar used to call on her in the absence of the deceased. Both of them wanted to have illicit relations with her. She had reprimanded them. Accused Uma Shankar brought two containers and left them at the room. The appellant was also with him at that time. He had told her that the said containers contained water for cleansing anklets. On the date of the occurrence the appellant and his co-accused visited his room. Accused Uma Shankar gave certain tablets to the deceased who asked for water whereupon the appellant poured the water into a steel glass from the said containers. The said. glass was thereafter handed over to Subhash by Uma Shankar. After having taken the said water the deceased writhed with pain and died then and there. The above statement is further fortified

by the statement of Public Witness 4 Dharam Pal before whom the appellant is alleged to have confessed his guilt.

(13) Learned counsel for the appellant while animadverting on the above testimony of Public Witness 5 Smt. Om Wati has contended that she is a lady of easy virtue. Thus it would be highly unsafe to place reliance on her statement. We are sorry we are unable to agree with the contention of the learned counsel. We feel that it cannot be laid down as a rule that in each case if a particular witness is found to be a bad character in that eventuality her testimony is liable to be flung to the winds. To our mind, it will be a very risky proposition of law. We feel that the Court while dealing with the testimony of a witness who is not of good character is required simply to examine the statement of such a witness with great care and caution. Her statement in such a case would be subjected to a greater scrutiny. If the Court even then comes to the conclusion that it would be safe to base the conviction on the said testimony, there is no such bar which would come in the way of the Court.

(14) The above view finds support from the view which the Hon'ble Supreme Court took in a case reported as : (1991)11LLJ269SC . State of Maharashtra and Another v. Madhukar Narayan Mardikar. In the said case the complainant was a lady of loose and licentious character. However, while dealing with the evidence of the said lady it was opined by their Lordships of the Supreme Court ' . . . .Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence. . . . '

(15) It is manifest from above that the evidence of a particular witness is not liable to be thrown to the winds sump because the wildness is a person or easy virtue, The Courts while dealing with the evidence of such a witness are required to be on

their tiptoe and guard.

(16) The prosecution in order to substantiate the allegations leveled against the appellant by Public Witness 5 Smt. Om Wati has placed on record reports of the Cfsi (Ex. CI and Ex. PB) the Chemical examiner on examining the two containers which contained the alleged water torn Cleansing the ornaments and the glass into which the said water was transferred for passing it on to the deceased torn the purposes of drinking came to the conclusion that they gave positive test for cyanide (vide Ex, CD- Then there is another report of the Chemical examiner (Ex. PB) placed on record by the prosecution with regard to the Chemical examination to the viscera of the deceased i.e. stomach, intestine, liver, spleen and kidney. On the examination of the same the Chemical examiner 'found the trace of cyanide therein. Thus the statement of Smt. Om Wati finds corroboration from the said reports of the Chemical examiner.

(17) Learned counsel for the appellant has then contended and led us though the Medical Jurisprudence And Toxicology (6th Edn.) by Professor Bernard Knight (page 716). According to the learned counsel in case the death was on account of consumption of Kcn in that eventuality the body of the deceased must show the following characteristics :--- (1) Post mortem stains due to injuries, if any, are bright red, the venous blood is bright red and fluid. (2) Skin is violet coloured and nails are blue. (3) Eyes are bright, glistening and pupils are dilated. (4) Jaws are firmly closed and fingers are clenched. (5) Smell of cyanide is notable as soon as the body, specially the lungs, are opened. (6) Rigor mortis sets in early and lasts longer.

(18) The learned author further observed while dealing with the effect of Hydrocyanic acid and Cyanides at page .7.15 : ' . . . Smaller doses cause salivation, burning in throat, nausea, giddiness, confusion, loss of muscular power and unconsciousness. Cyanosis usually appears and convulsions precede death.

(19) Potassium cyanide (KCN) is a very popular salt believed to act so instantaneously that no one has been able to know its taste. This belief is, obviously erroneous. Though Kcn is a very rapidly acting poison but the victim certainly gets enough time to recognize the taste. Available Kcn has potassium

carbonate and chloride as impurities which have corrosive effects on the throat and stomach and cause pain and vomiting.'

(20) According to the learned counsel, a close scrutiny of the post mortem report reveals that the doctor who conducted the autopsy on the dead body of the deceased found none of the above symptoms.

(21) The argument advanced by the learned counsel betrays his ignorance with regard to the contents of report. A close scrutiny of the report Ex. Public Witness 16/A reveals that the doctor found that rigor mortis was complete. He further found the nails of the deceased blue. According to the said report, the brain, lungs and tracheal mucosa were found to be congested and a pungent smell was emanating from stomach contents and body fluids. Thus, though it is correct that each and every symptom as mentioned in the above said book was not present, however, the doctor on post mortem found some of the symptoms. The rigor mortis was complete, the nails were blue and lungs, brain and tracheal mucous a were congested. Furthermore, Smt. Om Wati (PW5) has stated in unequivocal terms that on taking the said water from the glass the deceased writhed with pain and died instantaneously. Admittedly, cyanide is one of the most rapidly acting poison as opined by Cox in the book alluded to above. Thus, the argument of the learned counsel that the body of the deceased did not betray any of the symptoms of Kcn devoid of any force.

(22) Learned counsel for the appellant has argued that there is no evidence on record to show and prove that the appellant was found in possession of KCN. According to the learned counsel if the prosecution fails to prove the said fact in that eventuality the conviction of the appellant cannot be sustained and is liable to be set aside. The learned counsel in support of his argument has relied on the observations of their Lordships of the Hon'ble Supreme Court as reported in : 1984 CriLJ1738 . Sharad Birdhichand Sarda v. State of Maharashtra. '.... So far as this matter is concerned, in slid), cases the court must carefully scan the evidence and determine the four important circumstances which alone can Justify a conviction : (1) there is a clear motive for an accused to administer poison to the deceased, (2) that the deceased died of poison said to have been administered, (3) that the

accused had the poison in his possession, (4) that he had an opportunity to administer the poison to the deceased.'

(23) Learned counsel on the basis of the above authority has argued with great zeal and fervour that the prosecution in the present case has absolutely led no evidence, whatsoever, to show and prove that the appellant had had the poison in his possession. Hence the case of the prosecution is liable to be flung to the winds on this short ground alone.

(24) We are sorry, we are unable to agree with the contention of the learned counsel. The above authority deals with a case of circumstantial evidence. According to the facts of the said authority, no direct evidence was available on the point as to who administered the poison. It was in the above circumstances that it was opined that it must be proved beyond any shadow of doubt that the accused had had the poison in his possession. The facts of the instant case are altogether different inasmuch as we have got the statement of an ocular witness who is alleged to have seen the appellant administering the poison to the deceased.

(25) There is another aspect of the matter. Admittedly, the appellant is a goldsmith by profession. According to the enthralling commentary on Medical Jurisprudence And Toxicology by Cox, cyanides are used in photography, electroplating, tanning and gold processing. Thus it can be safely concluded therefrom that the appellant was in a position to secure the cyanide and this is what he told Public Witness 5 Smt. Om Wati that this is a solution meant for cleansing anklets.

(26) Furthermore, it is not necessary in each and every case to prove the factum of possession of poison by the accused in a case of murder by poisoning. The Court can draw an inference that the accused was in possession of the poison in question as this Court has done in the facts and circumstances of the present case. We are tempted here to cite in support, of our above view a few lines from the judgment of the Hon'ble Supreme Court. as reported in : 1988 CriLJ1097 , Bhupinder Singh v. State of Punjab, ' . . . The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the Court may be justified in drawing

permissible inference that the accused was in possession of the poison in question. There may be very many facts and circumstances proved against the accused which may- call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the Court can legitimately draw from the circumstances an inference on any matter one way or the other.'

(27) Learned counsel for the appellant has then contended that there was absolutely no motive on the part of the appellant to have killed the deceased who was quite close to the appellant and very well known to him.

(28) The contention of the learned counsel is without any substance. Admittedly, the appellant was having illicit connections with Public Witness 5 Smt. Om Wati. It was known to him that the deceased was also indulging in sex with her. Thus there is nothing strange that the appellant developed rivalry and he thus wanted to do away with the deceased. A man it is well-known may share any thing with anyone including his property and wealth, but he cannot share the woman with whom he is having sexual relationship. A man is very much jealous by nature in the matter of sex. Indian males are supposed to be the most jealous males in the matter of sex in the world. They would not like even to share a lady of easy virtue with any other man. Once it was observed by Bertrand Arthur William Russell while dealing with jealousy, shall be told that every properly constituted male would find life intolerable if he were not absolutely convinced that his wife was more virtuous than himself.'

(29) Thus there is nothing strange if the appellant and his co-accused (since deceased) chalked out a strategy and made a plan to do away with the deceased.

In this connection we would like to refer to the statement of Public Witness 5 Smt. Om Wati. She has stated in unequivocal terms that both the accused persons wanted to establish illicit connections with her and she had reprimanded them on the said score. She subsequently goes on to state on being cross-examined that the appellant wanted her to remain with him. The above statement further finds corroboration from the statement which she made before the police. She has got this to say on this point: that the appellant and his servant told her that they would maintain her in a better way than the deceased and as such she should accompany them and desert the deceased. But she did not agree.

(30) It is thus manifest from above that the appellant like any other man was very much possessive by nature. He wanted Public Witness 5 Smt. Om Wati to live as his mistress and accessible to him alone as and when he wanted to have her without any obstruction from any quarter whatsoever. The only course thus open to the appellant was to remove the obstruction i.e. the deceased which he found in his way. Thus we are of the view that there was sufficient motive on the part of the appellant to have done the deceased to death.

(31) In a case very much akin to the case in hand it was observed by the Hon'ble Supreme Court as reported in : 1956 CriLJ801 , Sunder Singh v. State of Uttar Pradesh, 'The learned counsel for the appellant also sought to attack the findings of the Courts below on the question of motive by pointing out that on the evidence of the prosecution witnesses themselves it appeared that there was intimate friendship between the deceased and the appellant previous to the date of the occurrence.

(32) The Courts below have considered that aspect of the case. It has been pointed out that the accused may have had an eye on the handsome wife of the deceased and that he had already developed a liaison with her. It cannot be said that those circumstances were not sufficient motive for the dastardly crime.....'

(33) Furthermore, it is now a well established principle of law that where the eye witnesses are available and their statements are worthy of placing reliance, the question of motive loses much of its importance and the Courts need not insist upon the same as the motive for commission of a particular crime remains a

mystery known to the accused alone. We are fortified in our above view by the observations of their Lordships of the Supreme Court as reported in : 1975 CriLJ66 , Nachhittar Singh v. .The State of Punjab, ' . . . . Be that as it may, the failure of the prosecution to establish the motive for the crime does not mean that the entire prosecution case has to be thrown over-board. It only casts a duty on the court to scrutinize the other evidence, particularly of the eye-witnesses, with greater care. The High Court was fully conscious of the need for such caution, and rightly observed: The absence of proof of motive has this effect only that the other evidence bearing on the guilt of the accused has to be very carefully examined.'

(34) To the same effect is the view given vent to by their Lordships of the Supreme Court as reported in : 1956 CriLJ827 . Gurcharan Singh v. State of Punjab, '... But it has repeatedly been pointed out by this Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.'

(35) The next contention raised by the learned counsel for the appellant is that admittedly Public Witness 5 Smt. Om Wati was in possession of the containers which contained the cyanide. Thus, according to the learned counsel it is just possible that she might have administered the poison to the deceased. In any case, according to the learned counsel, it creates a doubt in one's mind and does not rule out the possibility of the poison being administered by Public Witness 5 Smt. Om Wati.

(36) The contention of the learned counsel does not hold any water. Admittedly, it was Om Wati who was found at the spot by the police officers namely, Public Witness 4 Constable Rajbir Singh and. PW15 Si Sharwan Kumar (vide statement of Public Witness 9 Pratap Singh). so, had the murder been her handiwork it does not appeal to the reason as to why she would have remained with the dead body of Subhash deceased. Furthermore, it was she who brought the factum of death at the hands of the appellant to the notice of the police. Thus the contention of the learned counsel in the above stated circumstances does not appeal to the reason and does not fit in with the circumstances of the present case.

(37) The Learned counsel has then assailed the prosecution version on the ground that as per the statement of Cwi Sukhpal Singh the case property was taken to the Cfsi on December 15, 1987 for the purposes of Chemical analysis. However, the same was not accepted by the Cfsi officials on the ground that it was the fag end of the year and thus they would like to have the same in the beginning of the new year. He thus came back. He then took the same to the Cfsi on January 1, 1988. The learned counsel thus contends that the case property was not deposited with the Cfsi intentionally on the above-mentioned date i.e. December 15, 1987 with ulterior motive and the same was tampered with during the said period. The contention of the learned counsel.. we feel. is without any merit.

(38) Admittedly, there is evidence on record as per the statement of Cwi Sukhpal Singh and Public Witness 7 Kamta Prashad that the case property was taken for Chemical analysis to the CFSL. However, the same was not accepted. There is absolutely no reason whatsoever as to why they should be disbelieved on this point. They have given out a reason in their affirmations on oath that the case property was not accepted by the Cpsl officials. Thus we find that there is no lapse on the part of the investigating agency in connection therewith. Furthermore, both of them have stated that so long as the case property remained with them it remained intact and it was not tampered with.

(39) Learned counsel has then contended that the statement of CW1Sukhpal Singh was not recorded on December 15, 1987 when the samples were given to him for onward transmission to the CPSL. Instead the same was recorded on January 1, 1988 only. Thus it casts suspicion with regard to the authenticity of the case of the prosecution. The contention of the learned counsel is devoid of any force.

(40) Admittedly, this question was never put to Public Witness 15 Si Sharwan Kumar as to why he did not record the statement of Sukhpal Singh on December 15, 1987. Thus he was not afforded any opportunity to explain as to why he had not recorded the statement on December 15, 1987 with regard to the taking of samples on the said date. Admittedly, the Cfsi official as is abundantly clear from above did not accept the case property on December 15, 1987. Thus nothing

worthwhile was done on the said date. Hence the investigating officer i.e. Public Witness 15 Si Sharwan Kumar must have been under the impression that it was of no use to record the statement of CW1 Sukhpal Singh on the said date as he did nothing on the above said date. However, while recording the statement on January 1, 1988 this fact finds a mention in his statement that an effort was also made on December 15, 1987 to deposit the case property with the CFSL. Thus we are not inclined to draw any adverse inference on the said score. The above view was given vent to by the Hon'ble Supreme Court as reported in : [1974]1SCR102 , Ranbir and Others v. State of Punjab, '... The appellants' counsel also faintly contended that Tota Ram Public Witness 7 was examined by the police after considerable delay, the suggestion being that his evidence must be looked at with suspicion. We are not impressed by this submission. The fact of delayed examination of Tota Ram should, in our opinion, have been put to the Investigating Officer so as to enable him to explain the undue delay, if any, in examining Tota Ram. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the Investigating Officer should be asked specifically about the delay and the reasons therefore.'

(41) In the abovestated circumstances we are unable to take a different view from the view taken by the learned lower court. We do not see any force in the present appeal. The same is liable to be dismissed. It is dismissed as such.

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