

*D. P. Maheshwari v. Delhi Admn. and others* (3). D. P. Maheshwari though designated as Accounts Officer (A & O) or Officer on Special Duty or Store Purchase Officer was in fact mainly doing clerical work of maintaining certain registers, preparing drafts and seeking instructions. Services of D. P. Maheshwari had been terminated. He raised an industrial dispute. This was decided in favour of the workman and it was *inter alia* held that he was a workman. The writ petition filed by the management was allowed. Reliance was placed on the decision of the final Court on *Burmah Shell's* case (supra). The Supreme Court allowed the appeal of Mr. Maheshwari and set aside the judgment of the learned Single Judge and Division Bench of the High Court. Their Lordships held that D. P. Maheshwari was a workman. Mr. Khehar, learned counsel for the respondent, has rightly pointed out that while deciding *D. P. Maheshwari's* case their Lordships were fully aware of the *Burmah Shell's* case (supra) and had chosen to take a different view.

(9) For foregoing reasons we find no merit in this writ petition and dismiss the same. No costs.

R.N.R.

Before R. N. Mittal and M. M. Punchhi, JJ.

AMARJIT SINGH AND OTHERS,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 415-DB of 1986

April 5, 1988.

*Evidence Act (I of 1872)—Ss. 105, 106 and 113-A—Indian Penal Code (XLV of 1860)—S. 302—Murder of newly wedded wife—Husband accused—Motive dowry—Conviction based only on circumstantial evidence—Total absence of direct evidence—No extra judicial*

(3) 1983(2) Lab. and I.C. 1629.

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*confession either—Deceased last seen in the company of the accused—Husband wife expected to be together—Secret nature of crime—Burden of proof—Whether rests on the accused to prove facts especially within his knowledge—Applicability of S. 106 of the Act in cases of dowry deaths.*

*Held*, that Section 106 of the Evidence Act, 1872 stands rusted by dis-use in criminal cases. In the backdrop of thousands and thousands of dowry-death cases in which direct evidence of the crime is not available due to the set-up of homes in India, we feel a time has come to employ the said provision to meet an exceptional situation in appropriate cases when it would be disproportionately difficult by the prosecution to establish facts. (Para 19)

*Held*, that the welfare and physical protection of a bride is in trust with the people in whose care she has been put in and if she has been deprived of her life, the person to whom she stood entrusted, must necessarily account for as he alone is supposed to have a special knowledge about the crime especially when he or she was the last person to be seen together or expected to be together with the deceased. In the changing scenario, the rule of evidence embodied in Section 106 of the Evidence Act calls for sharpening user in the narrow context of bridal deaths. In case of dowry death there have arisen exceptional circumstances and in our view a procedure should be geared to apply to the exigencies of time by invoking in appropriate cases Section 106 of the Act requiring the accused to prove and explain why has the bride with whom he was seen together last or expected to be together last, turn into a corpse as that fact would be presumed to be especially within his knowledge. By this alone would the court be able to come to a moral certainty and convince its mind as a reasonable being as to whether the guilt of the accused is established beyond reasonable doubt or not. In our view the accused were required to give an account of high probability as to how the deceased died when she was undeniably last seen in their company and she otherwise circumstantially was presumed to be in their company. As the accused have failed to do so this is a circumstance pointing to the guilty. (Paras 21, 22 and 29)

*Appeal from the Court of Shri M. S. Lobana, Addl. Sessions Judge, Patiala dated 28th July, 1986 convicting and sentencing the appellants.*

**CHARGES AND SENTENCES :—**

*To undergo imprisonment for life and a fine of Rs. 3,000 each in default of payment of fine further Rigorous Imprisonment for six months under section 302 read with section 34 IPC.*

J. N. Kaushal, Sr. Advocate with G. C. Sandhu, Advocate, for the Appellant.

D. N. Rampal Advocate, for State.

## JUDGMENT

*Madan Mohan Panchhi, J.*

(1) I sat over this judgment brooding over the facts of this case entwined by the thought expressed by Mark Twain in *Princes and Paupers* :

“It may have happened or may not have happened, but it could have happened.”

The prosecution could at best prove and suggest that ‘it could have happened’ or ‘it must have happened’, the case being such. And the case is one of the many crimes alarmingly being committed these days against newly married women, popularly known as ‘Dowry-deaths’. Rarely is direct evidence available in such crimes. Still rarely is a conviction. The crime-rate of such kind has grown disproportionate to the ability of the State to bring to book the culprits of it. Sometimes the application of the old and hoary provisions of the Indian Evidence Act, 1872, and sometimes their dis-user, leaves the Court helpless in the matter, its hands raised in despair. Time indeed has come for an oriented approach and of taking a new look in deriving the best out of the rules of evidence to meet the challenge of these exceptional problems facing justicing.

(2) The appeals in hand are against the judgment and order of the Additional Sessions Judge, Patiala. The two appellants in Criminal Appeal No. 415-DB of 1986, namely, Amarjit Singh and Prem Singh, both brothers, stand convicted under section 302/34, Indian Penal Code, and sentenced to life imprisonment each, besides payment of Rs. 3,000 as fine; in default six months rigorous imprisonment each. The respondent—Bimal Kaur in Criminal Appeal No. 23-DBA of 1987 was likewise charged along with two aforesaid appellants but stands given the benefit of doubt and acquitted by the learned Judge, which has given rise to the State Appeal. Both will stand disposed of by a common judgment.

(3) The prosecution case is very simple and straight. On broader lines it has not even been disputed by the defence.

(4) The deceased Surinder Kaur, aged about 23, educated up to Matric, resided in her parental home in village Mithumajra in the district of Patiala, before her marriage to Amarjit Singh appellant, aged about 25, on March 10, 1985. In keeping with the tradition, which is almost universal, she was uprooted and displaced from

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her parental family and sent with her husband to find abode in his house in village Mehma Walian in the same district Patiala. The adult members in that family, besides the husband Amarjit Singh appelland, were his elder brother Prem Singh appelland and Prem Singh's wife Bimal Kaur respondent in the State Appeal. These three were the people around the deceased in her post-transplantation period.

(5) About 7½ months later on 27th October, 1985, Prem Singh appelland at 7.50 p.m. brought the corpse of Surinder Kaur to the Emergency Department of the Rajendra Hospital, Patiala, which was attended to by PW-1 Dr. Mohinder Singh, Emergency Medical Officer, Rajendra Hospital, Patiala. He conveyed a telephonic message to Police Station, Civil Lines, Patiala, where from Jagat Ram Constable DW-1 passed the information onwards by wireless to Station House Officer, Police Station, Julkan, as a suspected case of death by taking poison.

(6) At about 9 p.m. on October 27, 1985, Prem Singh appelland accompanied by his wife Bimal Kaur went to the parental house of the deceased at village Mithu Majra and conveyed that on account of illness Surinder Kaur had been brought and admitted to Rajendra Hospital, Patiala, and that she died there. Both the brothers of the deceased, namely, Jaspal Singh PW-3 and Saheb Singh PW-4 as well as their other relatives and friends came to the hospital where they found the dead body of the deceased lying in the Emergency Section of the hospital. The police from Police Station Julkan took its own time to arrive there. ASI Jhanda Singh PW-9 recorded the statement of Sahib Singh PW-4 at 12.05 p.m. on October 28, 1985. The Police Officer thereupon recorded his view that on receipt of post-mortem report alone could some action be taken. Statement Exhibit PF was ordered to be recorded in the Daily Diary at the Police Station but not as First Information Report. In statement Exhibit PF Sahib Singh PW-4 complained that his sister had complained to him that she was being harassed because in the dowry a Rajdoot motor cycle had been given to Amarjit Singh when he had expected a Bullet motor cycle and that he suspected that some members of the family of Amarjit Singh had administered poison to her and under the wrong pretext of her being ill, had brought her dead to the hospital.

(7) After the post-mortem report was complete, the dead body of Surinder Kaur was taken by her brothers to village Mithu Majra where she was cremated, and as per version of the two brothers,

none from the family of the accused attended the cremation rites on October 28, 1985.

(8) The following day, on October 29, 1985 Jaspal Singh PW-3 went to the village of his sister at Mehma Walian. He tried to gather information from the village which aroused his suspicion that the accused had murdered his sister. That day itself, SI Gurnam Singh PW-8, Station House Officer, Police Station Julkan, arrived in the village for verification of the inquest report in respect of the deceased. There he recorded the statement of Jaspal Singh PW-3 at 5.15 p.m. Thereupon he recorded his satisfaction that on the basis of the statement a case for registration of First Information Report under section 302/34, Indian Penal Code, had been made out, and he sent the necessary message for the purpose to Police Station, Julkan. This statement Ex. PE was to the effect that the complainants were a family of seven brothers and sisters, that they had married their sister Surinder Kaur with Amarjit Singh accused 6/7 months back and since marriage she was living with him, that 22/23 days prior to the occurrence his aunt Mohinder Kaur had died and Surinder Kaur and Amarjit Singh had come to offer condolences, that they were expected to come on the Bhog ceremony a few days later but failed to turn up, that his brother Sahib Singh had gone to the house of Amarjit Singh to enquire of the reason, that Surinder Kaur then told him that the reason was that they had quarrelled with each other, and that her husband, his brother and the latter's wife were maltreating and taunting her on account of the giving of Rajdoot motor cycle in the dowry instead of a Bullet motor cycle, that on October 27, 1985, Prem Singh accused came to their house and told them that Surinder Kaur had fallen ill for which she was taken to Rajendra Hospital where she expired, that Amarjit Singh was under the influence of Bimal Kaur being at her beck and call, that he had seen the dead body of his sister at the hospital where blood appeared to have oozed out from her nose and mouth and there were injuries on her face, that after post-mortem her dead body was cremated in his village but no member from her husband's family attended the last rites, that he had come to village Mehma Walian to make enquiries and that he had come to know that three afore-named accused having connived with one another, had suffocated his sister Surinder Kaur to death on account of her having brought insufficient dowry. This statement was almost on the same lines as statement Exhibit PF made by his brother earlier to ASI Jhanda Singh. What was suspicion in Exhibit 1-F became a positive assertion in Exhibit PE.

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(9) This set the police in motion to investigate the crime. The police had already obtained the post-mortem report prepared by PW-2 Dr. O. P. Aggarwal, Registrar, Forensic Medicines in Government Medical College, Patiala. Dr. Aggarwal initially opined that the apparent cause of death was asphyxia resulting from suffocation. However, since he had sent the viscera for chemical examination as police papers had spoken of poisoning, he had occasion to opine again, on the basis of the Chemical Examiner's report. Thereafter he took the view that the poison detected in the viscera was in fatal doze and also opined that suffocation was possible by closing the mouth and nose by hands and by clothes, and also that since the poison was in fatal doze, such administration of poison could lead to contractions of the respiratory muscles producing a sense of suffocation ending up in asphyxia. ASI Gurnam Singh PW-8 could make no headway in his investigation and reaching the conclusion that no offence had been made out against the accused persons regarding the death of Surinder Kaur, he submitted his report to the Deputy Superintendent of Police accordingly, opining that the suspicion of the brothers of the deceased was not well-founded.

(10) On November 8, 1985, the investigation of the case was entrusted to DSP Ajit Singh PW-12 of Police Station City, Patiala. He could only go to village Mithu Majra on November 14, 1985. He made enquiries and on November 16, 1985, he arrested Amarjit Singh and Prem Singh appellants. On November 18, 1985, he recorded the statements of a few persons inclusive of Amar Singh PW-6. Apparently the accused persons brought to his notice that the deceased on earlier occasions had been ill and on the fated day had been taken to Dr. Sarwan Kumar and Dr. Satpal of Naneola and then brought to Rajendra Hospital. He also counter-checked the suggestion made to him that Dr. Surinder Kumar had administered ammonia to the deceased when she was taken to him in an unconscious condition. On the completion of the investigation, the accused were put up on trial.

(11) The evidence led by the prosecution was of the following types :—

- (1) Evidence in the nature of motive and relatively circumstantial by the production of Jasoal Singh PW-3 and Sahib Singh PW-4, brothers of the deceased ;
- (2) Evidence semi-direct and relatively circumstantial from the mouth of PW-6 Amar Singh who had at 4 p.m. on

October 27, 1985, seen from a neighbour's house the deceased having been felled by the three accused and being given beatings;

- (3) Extra-judicial confession made by Amarjit Singh and Prem Singh accused to one Bharpur Singh which was listened to by Bagicha Singh PW-7. As a part of the said confession, Amarjit Singh appellant is stated to have said that he had felled Surinder Kaur by pulling her head-cloth from both sides and thereafter all the three accused had forcibly put poison in her mouth and in the process Bimal Kaur had caught the deceased by her arms and Prem Singh had caught her by her legs, and further that he and Bimal Kaur had thrust the head-cloth in the mouth of the deceased and pressed it, causing her death;
- (4) Medical evidence disclosing the case of poisoning and homicide by violence; and lastly
- (5) Circumstances and inferences pointing towards the guilt of the accused and their inability to explain how a live girl put in their custody, care and attention turned into a homicidal corpse.

Besides that, there was evidence of the investigation, which has been detailed above.

(12) The pleas of the accused were common. It was available in the statement of Amarjit Singh appellant under section 313, Code of Criminal Procedure. It is to the following effect :—

“The deceased was not keeping good health since before her marriage and she was operated upon twice for her ailments. She was having fits repeatedly and used to become unconscious on account of long standing ailment. She was not happy with her life. She was also not happy to reside in our village and wanted to reside at Patiala where she could get better environment and better life and also better medical aid. Her brother was residing at Patiala, but her brother and other family members were not prepared to keep her at Patiala and wanted her to reside with me at my village and wanted to reside at the house of her in-laws. She was being

given timely medical aid whenever she fell ill from the doctors, namely, Sarwan Kumar and Sat Pal of Naneola. No better medical aid was possible. Both are not MBBS and L.S.M.F. They are registered Medical Practitioner only. On the fateful day also, she suffered a fit and was found lying unconscious by my sister-in-law Bimal Kaur, who informed by brother, who was in the fields. I was out of station on that day. My brother mainly took her to Dr. Sarwan Kumar, who administered Amonia for inhaling. She is stated to have become conscious and was taken by my brother to Rajindra Hospital, Patiala, under the advice of Dr. Sarwan Kumar. Earlier at Naneola, while she was unconscious, a spoon was used to break her unconsciousness by opening her mouth and putting water into it. When my brother reached Rajindra hospital and before she was admitted in any ward, she expired. My brother then informed my in-laws about her death. This case is a false one. We did not give any beatings to her nor strangulated her. I did not administer any poison to her nor was administered by her brother or his wife. Since she was frustrated owing to long-standing ailment and was unhappy with her life in our village and wanted to reside at Patiala, she might have taken the poison out of frustration and nervousness."

(13) Some defence evidence of not much significance was led and would be adverted to at appropriate places. The trial court arrived at the result pointed out in the earlier part of this judgment.

(14) In appeal, Shri J. N. Kaushal, Senior Advocate, learned counsel for the appellants, addressed us at length on every aspect of the case. His foremost attack was against the evidence of PW-6 Amar Singh and Bagicha Singh PW-7 and according to him, if the evidence of these two witnesses were to be discarded, the prosecution case would stand collapsed. Nowhere was the rub which set us a thinking. Will it? If there is no eye-witness to the crime and there is no extra-judicial confession, should silence of the accused rule the roost or is it a case for invoking the provisions of section 106, Indian Evidence Act, 1872; a rule of evidence seldom applied in criminal case, the applicability of which has never been altogether ruled out?

(15) It is commonly said that rules of evidence in civil and criminal cases are in general, the same, but some provisions in the



Indian Evidence Act are peculiar to criminal cases and others peculiar to civil cases. There is, however, a marked difference as to the effect of evidence in civil and criminal cases. Thus, whereas in a civil case a mere preponderance of probability is a sufficient basis of decision, in a criminal case persuasion of guilt must amount to "such a moral certainty as convinces the minds of the tribunal as reasonable man beyond all reasonable doubt." (Citation in Best, in R. V. Sterns picked up from Law of Evidence by M. Monir, 1986 Edition). Where, therefore, there is no such moral certainty, and there is reasonable doubt as to the guilt of the accused, the benefit of the doubt is given to the accused. This rule nowhere finds specifically enacted in the Evidence Act but being a rule of prudence is founded on public policy. As to the degree of such moral certainty required in a criminal case, burden of proof is sometimes on the accused, as go sections 105 and 106 of the Indian Evidence Act, 1872, which are in the following terms :—

"105. BURDEN OF PROVING THAT CASE OF ACCUSED COMES WITHIN EXCEPTIONS.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code (XLV of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence is upon him, and the Court shall presume the absence of such circumstances.

106. BURDEN OF PROVING FACT ESPECIALLY WITHIN KNOWLEDGE—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

#### Illustrations.

- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with travelling on a railway, without ticket. The burden of proving that he had a ticket is on him."

(16) It would be prudent simultaneously to keep in mind the distinction between 'direct' and 'circumstantial evidence'. Broadly

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stated, 'direct evidence' is that which goes expressly to the very point in question and which, if believed, proves the point in question without aid from inference or reasoning. Indirect or circumstantial evidence, on the other hand, does not prove the point in question directly but establish it only by inference. It is well settled by a catena of precedents that following conditions must be fulfilled before a case against the accused based on circumstantial evidence can be said to be fully established :—

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(17) Ordinarily the burden of proving every ingredient of the offence, even though negative averment be involved therein, is on the prosecution, but it seems that under this section, burden of proving the fact would be upon the accused person, if the subject of the averment, whether in affirmative or negative, is peculiar within his knowledge.

(18) Vivian Bose, J. in *Shambhu Nath Mehra v. State of Ajmer*, (1) while defining the scope of section 106, Indian Evidence Act, 1872, observed as follows :—

"(11) This lays down the general rule that in a criminal case the burden of proof is on the prosecution and S. 106 is

certainly not intended to relieve it of that duty. *On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.*

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

It is evident that this cannot be the intention and the Privy Council has twice refused to construe this Section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalla v. The King*, 1936 P.C. 169 (AIR V 23) (A) and *Seneviratna v. R.*, 1936-3 All. ER 36 at p. 49(B)." (Emphasis supplied).

(19) Much water has flown under the bridges since then. Section 105, Indian Evidence Act, 1872, stands rusted by dis-use in criminal cases. In the backdrop of thousands and thousands of dowry-death cases in which direct evidence of the crime is not available due to the set-up of homes in India, we feel a time has come to employ the said provision to meet an *exceptional situation* in appropriate cases when it would be disproportionately difficult by the prosecution to establish facts. By and large in such cases, the young bride, by tradition, is displaced from her parental roof to go under the roof of her husband's family. Being a stranger in that environment and the trauma she experiences by her transplantation, it is her legitimate due that the people who have brought her to that house, look after all her needs and give her the necessary protection, physical and mental, so that she takes roots in the new soil. It is elementary that she has freedom from fear in the first few years till she gains ground. If fear be instilled in her mind by the attitude of the husband and/or his family members, she may even be afraid to go to sleep, last anything be done to her while

asleep. If the tradition-bound Society puts the bride in the four-walls of a new house and those four-walls will not remain open to the view and gaze of others all the time, and in that closeted set-up her live body is turned into a corpse or is made to turn into a corpse, I see then no reason why the society cannot insist the inmates of the house, being accountable in terms of section 106, Indian Evidence Act, 1872, to disclose facts especially within the knowledge of the accused. As it seems to us, this is one of the exceptional situations the provision was designed to meet. Vivian Bose, J. says further in the same report preserving the exceptional situation:—

“This is a section which must be considered in a common-sense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the case with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.

(20) As it appears to us, in the changing social pattern, with the greed for dowry and lust for money life respect for human life, and more so of the female-victim involved, has gone with the wind. The closed doors behind which such crimes are committed, the opportunity to choose the time of the commission of crime with the accused, the non-availability of direct evidence and the non-availability of even circumstantial evidence, which would complete the chain of guilt, has led to a deplorable situation putting to ridicule the rules of trial and the role of the judge.

(21) It is well recognised in criminal law of breach of trust that where property is entrusted to another, it is the duty of that other to give the true account of what he did with the property so entrusted to him and his failure to do so raises under section 105 a presumption that he had criminally misappropriated the property so entrusted to him. We view that the position of a bride cannot be worse. Her welfare and physical protection is also in trust with the people in whose care she has been put in and if she has been deprived of her life, the person to whom she stood entrusted, must necessarily account for as he or she alone is supposed to have a

special knowledge about the crime especially when he or she was the last person to be seen together or expected to be together with the deceased. It would not be out of place to note a quotation from, Syrus — *Judex damnatur-cum-nocens absolvitur*. "The Judge is condemned when the guilty is acquitted."

(22) In the changing scenerio, the rule of evidence embodied in section 106, Indian Evidence Act, 1872, calls for sharpening user in the narrow context of bridal deaths. The trend and the need has even been reflected in the recent amendment to the Evidence Act in section 113-A, which is worth reproduction here :

"113-A. PRESUMPTION AS TO ABETMENT OF SUICIDE BY A MARRIED WOMAN.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

*Explanation.*—For the purposes of this section, "cruelty" shall have the same meaning as in section 438-A of the Indian Penal Code (46 of 1860)".

If the presumption of abetment is raisable in that context, it is rebuttable too. A Single Bench of this Court in *Romesh Kumar v. State of Punjab*, (2) had taken the view that by introducing section 113-A, the Court has been facilitated to raise a presumption, though rebuttable, and raising a presumption at a trial was not part of the substantive law but rather a part of the law of procedure. In case of dowry deaths there have arisen exceptional circumstances and in our view a procedure should be geared to apply to the exigencies of time by invoking in appropriate cases section 106, Indian Evidence Act, 1982, requiring the accused to prove and explain how did the bride with whom he was seen together last or expected to be together last, turn into a course as that fact would be presumed to be especially within his knowledge. By this alone would the Court be

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able to come to a moral certainty and convince its mind as a reasonable being as to whether the guilt of the accused is established beyond reasonable doubt or not.

(23) Now is the present case an exceptional one. For what we have held earlier; in our view; it is, as would be evident when we discuss the prosecution evidence.

(24) The evidence of PW-3 Jaspal Singh and PW-4 Sahib Singh has been outlined earlier. According to both of them, their sister was subjected to harassment because the dowry was not to the satisfaction of the accused persons. The evidence of these two brothers cannot be discarded on the mere fact that initially in Exhibit PF the statement made by Sahib Singh positive accusation of guilt had not been made and merely a suspicion or that later Jaspal Singh while lodging the First Information Report had made a positive accusation about his sister being done to death by the accused. As elicited from them, the fact that the deceased had been operated for appendicitis at the Rajendra Hospital, Patiala, while a maiden, is also of no consequence to assume that he had any stomach problem thereafter. And lastly, the mere fact that no letters had been exchanged between the deceased and her brothers is not enough to conclude that the brothers had stopped anything to do with the deceased which had contributed to her depression on account of her stomach problems and her possible commission of suicide. The villages of the parties were not at much distance between one another and when they were occasionally meeting each other, there was no question of any correspondence being found. We agree with the reasoning of the learned trial Judge and believe the version of PW-3 Jaspal Singh and PW-4 Sahib Singh.

(25) Amar Singh PW-6 stated that on October 27, 1985, at about 4 p.m. he had gone to the house of Pritam Singh. The wife of Amar Singh was a cousin to the wife of Pritam Singh, but Pritam Singh's wife was dead. The house of Pritam Singh adjoined the house of accused. He had gone there to borrow a cart for the carriage of his paddy. He heard a noise coming from the house of the appellants and a daughter of Prem Singh was shouting that her aunt had been killed. He saw from the boundary wall that the three accused had felled the deceased and they were administering beatings to the deceased. Prem Singh appellant abused him saying that he should go away because it was their domestic matter.

Though his statement, as stated earlier, was recorded by the police on November 18, 1985, by the Deputy Superintendent of Police, that by itself would not be a ground to discard his statement, or his being a chance witness. He is a Noonger by caste and coming from the weaker sections of the society. He thus had need to borrow the cart the kind of which was available with his relative. Such reason of his visit to the house of Pritam Singh cannot be doubted. Some effort was made to discredit him as to how he could see across when the wall was statedly high. According to the draftsman and the police the wall was 5 feet high, but since the witness had stated that he had claimed over it and had seen the incident, the height of the wall loses significance. The main argument to discredit him was that his name had been included in the register of bad characters in Police Station Julkan in the past. The witness was positive that his name did not figure in such register any more. To keep the witness discredited on that score for ever would be discrediting reformation for good. We are of the considered view that on these scores the witness cannot be disbelieved. All what he has stated is that he saw the deceased being manhandled by all the three accused and that he had seen her in the company of the accused in their house. He does not say that he saw any poison being administered to the deceased. He does not say that the injuries were caused by any weapon. He is in that manner not a witness to the crime. He is a witness to the important circumstance that the deceased was last seen alive in the company of the accused when they were manhandling her and further circumstantially they were not expected to be beating a corpse, indicating that the deceased was alive. The trial Court rightly believed this witness and we place complete reliance on his evidence. Further, though we have accepted his presence to see the happening, even otherwise the accused persons did not and cannot deny that Surinder Kaur deceased was an inmate of the house and she was normally expected to be in their company, then now she met her death would especially be in their knowledge.

(26) The next witness is Bagicha Singh of village Hajipur, an Ex-Sarpanch. He had gone to village Bhankar on November 10, 1985, in the house of Bharpur Singh, where Amarjit Singh and Prem Singh appellants came. They were nervous and on being questioned by Bharpur Singh, Amarjit Singh told him that he along with Prem Singh and Bimal Kaur had committed the murder of Surinder Kaur on October 27, 1984, by strangulating her. When asked to give the full story, he told him that he was not given sufficient dowry at the

time when he had expected a Bullet motorcycle and instead had been given a Rajdoot motorcycle. He had been telling the deceased to get replaced the inferior articles of dowry and for that purpose all the three accused had been beating her. After giving the detailed story, he finally said that he threw his wife Surinder Kaur by pulling her head-cloth from both sides and thereafter poison was forcibly put in her mouth by the three appellants and as she felt uncomfortable due to the poison Bimal Kaur had caught hold of her by arms and Prem Singh had caught hold of her by the legs and that he had thrust head-cloth in the mouth of Surinder Kaur and had also pressed her mouth and nostrils whereby her lips were injured. Finally, he said that they had taken her to the hospital to conceal their act of murder and then message was sent to her parents. Prem Singh appellant then affirmed as to what Amarjit Singh had said as the truth. Effort has been made to discredit this witness on the ground that the witness did not tell anyone about the confession of the accused till statedly he told the police. Additionally, it has been said that he was a witness at the beck and call of the police because suggestion was made to him that he had been made a false witness under the influence of Ajit Singh, Deputy Superintendent of Police. The learned trial Judge did not place reliance on this witness mainly on the ground that the two appellants, Amarjit Singh and Prem Singh, had not gone to him direct for making the said confession but had rather gone to Bharpur Singh of village Bhankar. Bharpur Singh, though cited as a P.W., had been given up by the police as being won over and the learned trial Judge took the view that it could not be expected that he would be won over. And on that basis, he drew an adverse inference to this part of the prosecution case. We have no reason to take a different view even though the State appeal is before us. So the evidence of this witness would remain discarded, as before.

(27) The poison found in the viscera of the deceased was Strychnine. Strychnine is a poison under the Punjab Poisons Possession and Sale Rules, 1966, framed under the poisons Act, 1919. The rules prohibit the possession or sale of any poisons specified in the Schedule. Items 49 and 62 cover it up by the names 'Nux Vomica' and 'Strychnine' respectively. According to Modi's Medical Jurisprudence and Toxicology (Twentieth Edition) the fatal dose of Strychnine is 60 to 100 mgs and is considered one of the most deadly poisons. These poisons are sometimes used for destroying vermin and cattle. Its administration causes contraction of respiratory muscles producing a sense of suffocation which may end in asphyxia.



The usual fatal period is one to two hours and it may even be delayed to six hours in rare cases. Now Dr. O. P. Aggarwal PW-2 opined that the death had resulted on account of asphyxia resulting from suffocation and that suffocation was also possible by the closure of the mouth and nose by hands and clothes. He admitted the suggestion that the death could be caused by strychnine in fatal dose. The opinion of Dr. Aggarwal is in line with the opinion of Dr. Modi. The deceased undeniably had died on account of strychnine poisoning.

(28) Now the next question is—was the poisoning suicidal or homicidal. Dr. Aggarwal found the following four injuries on the dead body of Surinder Kaur :—

1. Multiple abrasions and contusions were found on the nostril. They were more prominent on the tip of nose. There was swelling under the abrasions and contusions.
2. Contusion 5 cm × 5 cm on the left side of the face and on the front of left ear. Local swelling was also seen.
3. Multiple small abrasions were found on the inner side of both lips. Local swelling and clotted blood was found over the abrasions.
4. Small lacerated wound was present on the tongue.

Injuries Nos. 1 and 2 speak by themselves. These are caused by violence. Contusion 5 cm × 5 cm on the left side of the face and on the front of left ear, underneath which was local swelling, could not be the result of strychnine poisoning. Regarding post mortem appearances, Dr. Modi had opined in his afore-referred to book, that livid patches may be observed on the body, and may be mistaken for bruises caused by violence. Had there been merely injuries Nos. 3 and 4 the chance of violence could be ruled out, leading to the possible conclusion that the death of the deceased was suicidal. But in the presence of injuries Nos. 1 and 2 that possibility is ruled out and the only conclusion possible is that the death of the deceased was homicidal and the poison was forcibly administered to her. No other conclusion is possible in the circumstances.

(29) The defence of the accused on the face of it is false because they have calculatedly not given the time of the alleged fits of the

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deceased. No effort has been made to examine any doctor by them, to show that the deceased had been attended to by them. The defence gives a lending assurance to the prosecution case that the deceased was in the company of the accused persons and it cannot be denied that it was Prem Singh who had taken the dead body of the deceased to Rajendra Hospital, Patiala. Dr. Mohinder Singh PW-1 vouchsafes that. DW-3 Gurmail Singh's saying that Amar Singh PW-6 did not come to his house is of no consequence, for he cannot be expected to be sitting all the time in his house. The accused have not taken the positive plea that the deceased did not meet her death by homicide or that she had met her death by suicide. They have calculatedly left it to conjectures. In our view, they were required to give an account of high probability as to how the deceased died when she was undeniably last seen in their company and she otherwise circumstantially was presumed to be in their company. They have failed to do so is another circumstance pointing to their guilt.

(30) To sum up, the prosecution has been able to prove the strong motive for the crime, the fact of the deceased being last seen alive in the company of the accused on the date of the occurrence, the defence taken by the accused being false, and the deceased dying an unnatural homicidal death. Thus, in our considered view, the prosecution has been able to establish its case and we find no reason to interfere in the conviction of the appellants Amarjit Singh and Prem Singh. The reasoning advanced by the learned trial Judge for acquitting Bimal Kaur may not be fully convincing but since he has taken that view, we would not upset it in the State appeal and we thus affirm her acquittal.

(31) The end result is that both these appeals fail and are hereby dismissed.

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R.N.R.

*Before D. V. Sehgal, J.*

S. B. NARINDER SINGH,—*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 6379 of 1986*

May 12, 1988

*Punjab State Public Service Commission (Conditions of Service) Regulations, 1958—Regulation 8—Petitioner member of Indian*