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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1104/2013

Reserved on: December 18, 2017

Pronounced on: January 04, 2018

ANIL KATARIA

..... Appellant

Through: Mr K. Singhal, Advocate

versus

STATE

..... Respondent

Through: Ms Radhika Kolluru, APP for State

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

JUDGMENT

04.01.2018

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Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 15th July, 2013 passed by the learned Additional Sessions Judge ('ASJ'), Rohini, Delhi in Sessions Case No.49/1 arising out of an FIR No.62/2007 registered at Police Station ('PS') Kanjhawala, Delhi convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 18th July, 2013 whereby the trial Court sentenced the Appellant to imprisonment for life with a fine of Rs.5,000/-, and in default of payment of fine to undergo simple imprisonment ('SI') for six months. The Appellant was further directed to pay compensation of Rs.50,000/- to the mother of the deceased and in default to undergo further SI for six months.

Case of the prosecution

2. The case of the prosecution is that information was received at 6.38 pm under DD No.7-B on 30th March, 2007 that at House No.460, Ghewra Village, a lady had died. A copy of this DD was handed over to Assistant Sub Inspector ('ASI') Dharambir Singh (PW-13).

3. Another DD No.7-D was recorded regarding identification of the deceased as Ramlata (wife of the Appellant) by her brother Joginder Singh (PW-3) at the SGM Hospital, Mangol Puri, Delhi.

4. The crime team came to the spot and took photographs of the scene of occurrence. A rough site plan was also prepared. The jewellery articles worn by the deceased were sealed and seized. The articles from the room of deceased were also seized and sealed. On 30th March, 2007 itself, Dr V.K. Jha (PW-4), the Medical Officer of BJRM Hospital, Jahangir Puri, Delhi conducted a post-mortem of the deceased. The observations in the post-mortem report were as under:

“General Description: Clothes worn by dead body were suit, salwar, underwear and bra. Built of the body was moderate. Rigor mortis was present on upper limb and lower limb. Eyes were closed, conjunctivitis was congested, cornea was hazy, mouth was closed, tongue was inside and nails were bluish.

I observed following external injuries on the dead body:

- (i) A-linear abrasion circular over both hands 2.5 x1 cm.
- ii) Bruising of size 3cm x 2 cm over back or lower chest.

On internal examination, of stomach, the mucosa was haemorrhagic and there was semi digested food of umber colour.”

5. PW-4 reserved his opinion on the cause of death till the chemical analysis report of viscera was received. According to him, the post-mortem findings were consistent with “consumption of toxic substance” and external injuries were “suggestive of assault/struggle before death.” After receipt of the report from the Forensic Science Laboratory (FSL), PW-4 opined on 4th July 2007 that the FSL report revealed the presence of “Aluminium Phosphide, commonly called ‘celphos’”. He, therefore, opined that the cause of death was “acute respiratory distress consequent to (*sic* upon) multi-organ failure as a result of consumption of Aluminium Phosphide.”

Charges framed

6. The Appellant was arrested on 12th April, 2007 at 6.30 pm from his house. After conclusion of the investigation, a charge sheet for offences under Section 498A/302/34 IPC was filed. The charges framed against the Appellant read as under:

“That on the intervening night of 29/30.3.2007 at H.No. 460, Phirniwala Road, Village Ghewra, Delhi within the jurisdiction of PS Kanjhawala, you committed the murder by causing the death of Smt. Ramlata and thus you thereby committed an offence punishable under Section 302 IPC and within the cognizance of this court.

Secondly, you were married with deceased Smt. Ram Lata on 25.4.1992, you being husband of deceased Smt. Ram Lata and you started harassing her in connection with demand of dowry between 25.4.92 to 29.3.2007 at matrimonial house bearing H.No. 460, Phirniwala Road, Village Ghewra, Delhi within the jurisdiction of PS Kanjhawala and thereby you committed an offence punishable under Section 498A IPC and within the cognizance of this court.”

The case in the charge sheet

7. It is significant to note that in the charge sheet, the manner of description of the offence was as under:

“From the investigation conducted so far, it has been revealed that Anil Kataria had relations with a lady namely Sanjana and the relations between accused Anil and his wife deceased Ramlata were strained because of demand of dowry and Anil's relations with Sanjana. As per the disclosure statement of accused Anil, he had **mixed rat poison in the coffee** and given the same to Ramlata and after drinking the said coffee, Ramlata started vomiting and later on she expired and the FSL report and final opinion of Autopsy surgeon also support his version. Sufficient evidence against Anil to charge sheet him have come on file.” (emphasis supplied)

8. In other words, the specific allegation was that the Appellant mixed rat poison in the coffee and gave it to his wife Ramlata. After drinking the said coffee, the deceased started vomiting and later expired.

Defence of the Appellant

9. The prosecution examined 14 witnesses. In his statement under Section 313 of Code of Criminal Procedure, 1973 (‘Cr PC’), the Appellant maintained that he was innocent. As regards what had happened on the fateful night, he stated as under:

“It is correct that I along with all my family members were present in the house and after dinner, we had slept when deceased Ramlata started vomiting after her dinner and she was taken to Delhi hospital at Bahadurgarh where she was declared dead and the relatives of my wife were duly informed, who called the police in the morning.”

10. According to the Appellant, there were no external injuries on the body when it was inspected by the police and the doctor conducting the post-mortem had given a false report regarding external injuries “in collusion with the complainant party”. As regards the demand of dowry, harassment

pertaining to dowry etc. he denied it as being totally false. He also denied knowing any girl by the name Sanjana, much less having any illicit relations with her. He volunteered to produce defence evidence, but ultimately did not examine any witness.

Trial Court judgment

11. The trial Court in the impugned judgment came to the following conclusions:

(i) The delay in registering the FIR has been satisfactorily explained by the prosecution since the matter had been kept pending for the post-mortem.

(ii) There was no evidence brought on record to show that the Appellant had instigated his wife to commit suicide. There was no evidence to prove that she was harassed or treated with cruelty on account of demand of dowry. There was no proof of the Appellant having any affair with another lady as alleged.

(iii) On the previous night, the deceased had taken her meal with *chutney* and according to the time since death as per the post-mortem report, she had died at about 11.30 pm. The FSL report showed that the viscera contained aluminium phosphide.

(iv) There was no evidence to show that the deceased was taken to the hospital after she started feeling unwell. Merely because the injuries on her two hands and the bruising over the back and lower chest were not noticed by the Crime Team and the IO, did not mean that the said injuries did not

exist at that time. There was no need for PW-4 (Dr. V.K. Jha) to falsely implicate the Appellant. The injuries suggested that she was caught hold of and was struggling before her death.

(v) The family members of the deceased were informed of her death only the next morning although she had died the previous night at about 11.30 pm. It appeared that the family members of the accused wanted to conceal her death and cremate her body secretly.

(vi) In the room, only the Appellant and their son were present and, therefore, the burden lay on the Appellant to explain, under Section 106 of the Indian Evidence Act ('IEA'), how the deceased had died.

(vii) The aluminium phosphide was administered to the deceased through *chutney* and therefore the distinct odour of aluminium phosphide "could not be detected in the flavour of *chutney*."

(viii) The prosecution was able to complete the chain of circumstances and prove beyond reasonable doubt that the deceased had been poisoned. The Appellant had failed to discharge the onus of explaining how the deceased, with whom he had resided in the same room along with their son, had died.

12. This Court has heard the submissions of Mr. K. Singhal, learned counsel appearing for the Appellant and Ms. Radhika Kolluru, learned APP appearing for the State.

Chain of circumstances

13. As noted earlier, while the Appellant had been acquitted for the offence

under Section 498A IPC, he has been convicted under Section 302 IPC and sentenced accordingly. The case is one of circumstantial evidence. The circumstances, which according to the prosecution, constituted the entire chain, as spelt out in the charge-sheet, were as under:

- (i) The Appellant had relations with a lady named Sanjana, as a result of which the relationship between the Appellant and the deceased were strained.
- (ii) The relationship was also strained because of demand of dowry made by the Appellant.
- (iii) The Appellant had mixed rat poison in the coffee and given it to the deceased and after drinking the said coffee, the deceased started vomiting and later expired.
- (iv) At the time of death, it was only the accused, the deceased and their son who were present in the house. The burden therefore lay on the Appellant to explain, under Section 106 of the IEA, as to how the deceased died.
- (v) The post-event conduct of the Appellant also raises suspicion. He did not inform the family members of the deceased of her death till 4 am on the following day although the death had occurred at 11.30 pm on the previous night. This further raises suspicion that the accused and his family members wanted to conceal the death of the deceased and secretly cremate her.
- (vi) The post-mortem report apart from proving that the death was on account of aluminium phosphide poisoning, also showed that there were injury marks on the wrists and back of the deceased, which

showed that there was a struggle just prior to her dying.

Motive not proved

14. From the impugned judgment of the trial Court, it is plain that the circumstances (i) and (ii) above, namely, the Appellant having illicit relations with another woman and him and his family members making dowry demands from the deceased were not proved. Therefore, the central element of the case namely the motive for commission of the crime was not proved at all. This aspect of the matter seems to have been completely missed by the trial Court in the impugned judgment. Although the absence of proving the motive for a crime is not always fatal to the case of the prosecution, where it is a case of circumstantial evidence, and all the circumstances constituting the complete chain of events do not by themselves unerringly point to the guilt of the accused, then the absence of proof of motive for the crime would attain significance.

Case in charge sheet not proved

15. One crucial aspect of the case which was made out in the charge-sheet was that rat poison was mixed by the accused in the coffee which was consumed by the deceased the previous night and this is what led to her death by poisoning. The aforesaid specific case, however, was failed to be proved by the prosecution. The FSL report showed that no sample of any such coffee drunk by the deceased was sent to it for examination.

16. In this context, it is important to note that according to the Appellant, he along with his family members was present in the house and they had

proceeded to sleep after dinner when the deceased started vomiting. He claimed that she had been taken to the hospital at Bahadurgarh where she was declared brought dead and that her family members were thereafter informed.

17. The statements of the Appellant's son Sagar and the parents of the Appellant were recorded by the IO but for some reason they were not cited as witnesses.

18. In his cross-examination, the IO, ACP Baljit (PW-14) admitted: "It is correct that ASI had recorded the statements of Smt. Bhoop Kaur, Mr Dayanand Kataria as well as Master Sagar (minor) on 30th March, 2007 and in their statements nothing incriminating was found against the accused." The said statements were marked as PW13/B-1 to B-4.

19. The case of the prosecution was that the accused, the deceased and their minor son Master Sagar had dinner together. The theory of aluminium phosphide being included in the chutney was not put forth by the prosecution at any stage and even in the charge sheet. The prosecution failed to prove that rat poison had been mixed in the coffee which was consumed by the deceased and that led to her death.

20. In his statement to the police (PW-13/B-4), the son Sagar stated that he and his parents had dinner at around 10/10.30 in the night. He stated that his mother got up once in order to vomit and thereafter lay back to the bed and he also went to sleep. When he woke up, his grandmother informed him that his mother had been taken to the hospital and he only came to know later

that she had died. In his statement before the police (Ex.PW-13/B-3), the Appellant stated that between 9.30 and 10 pm, the three of them had dinner of *rotis*, mint (*pudina*) *chutney* and vegetables (*sabzi*) and also some jaggery. After dinner, the deceased had asked her son Sagar about his admission and after that the son made coffee which all three of them drank. All of them thereafter went to bed.

21. The crucial question was, therefore, at what stage did the Appellant, if at all, decide to mix the rat poison in the coffee of the deceased, as alleged by the prosecution? In the first place the prosecution was unable to prove that any rat poison was in fact purchased by the Appellant. In his deposition, PW-14 *inter alia* admitted that “the accused took us to Bahadurgarh market for search of the person from whom he purchased insecticide (for killing the rats) (which was used in the commission of the offence), but the said person could not be found.”

FSL Report

22. No attempt was made in fact to collect any sample of the coffee that was supposed to have been prepared by the son of the deceased and drunk by all three of them before going to bed. The FSL report (Mark A) talks of four parcels marked as 1, 2, 3 and 4. Parcel-1 was the double bed sheet which contained Ex.1 (namely one blue and brown with white-based printed bed sheet having some stains). Parcel-4 contained, *inter alia*, Ex. 4A, 4B and 4C. Ex.4A was “stomach and small piece of intestine with contents”. Ex.4B was some pieces of liver, spleen and kidney and Ex.4C was the blood sample. Ex.1 and Ex.4A were found to contain aluminium phosphide. Ex.4B and 4C

contained only phosphide. Parcel-2, which was the vomit residue, contained Ex.2 described as “dark grey coloured powdery substance.” Parcel-3, which was stated to be ‘*chutney*’ contained Ex.3 i.e. ‘brown coloured semi-solid material’. Both Exs.2 and 3 were found to contain ‘aluminium’.

23. The above FSL report is dated 29th June, 2007. Based on the said report PW-4 gave the final opinion as follows: “In my opinion, in this case is cardio vascular collapse. Acute respiratory distress and multi-organ failure as a result of consumption of aluminium phosphide.”

24. It must be noted that the abovementioned final opinion dated 6th July, 2007 of PW-4 was preceded by the post-mortem report dated 30th March, 2007 where while the cause of death had to await the report of the chemical analysis of the viscera (FSL report), the post-mortem findings were said to be “suggestive of assault/struggle before death and that PM findings are consistent with consumption of toxic substance.” The suggestion of assault/struggle was as a result of two external injuries as noted hereinbefore.

25. What is significant is that the above external injuries were not noticed in the crime team report (Ex.PW9/A) or even by the IO who first visited the spot i.e. PW-13. The crime team report shows that the crime team reached the spot and undertook the examination at about 9/9.45 am on 30th March, 2007.

26. Among the articles seized was a *katori* (bowl) of *chutney* from the refrigerator. In column 14 of the crime report, it is, *inter alia*, noted that the family members stated that the deceased had dinner with them and

thereafter, after some time, she vomited on the bed sheet. There were no coffee mugs or any coffee residues which were seized by the crime team. Therefore, the basis on which the charge-sheet stated that the rat poison was mixed in the coffee that was drunk by the deceased is a mystery.

27. Therefore, the prosecution miserably failed to prove the following:

- (i) That the accused had purchased any rat poison from the market at any time prior to the death of the deceased.
- (ii) That he had mixed such rat poison in the coffee which was drunk by the deceased after dinner on the previous night.
- (iii) That such rat poison was mixed with the *chutney* by the Appellant which was then consumed by the deceased which led to her death.

28. The stomach sample and the brown stains on the bed sheet were found to contain aluminium phosphide. The *chutney* was shown to contain 'aluminium'. The liver and the blood contained 'phosphide'.

29. The prosecution has failed to explain how when three persons i.e. the deceased, the accused and their son had the *chutney* as well as the coffee, it was only the deceased who died of poisoning with neither the Appellant nor his son being affected in any manner. The prosecution has also been unable to explain how it was permissible for it to try the Appellant for a case not put forth in the charge sheet. In other words, according to the charge sheet the Appellant mixed rat poison in the coffee and gave it to her. After consuming the poisoned coffee, the deceased died. What, however, the prosecution sought to prove at the trial was different. It sought to prove that in order to kill the deceased, the Appellant had mixed poison with the

chutney. This shift in the case of the prosecution ought not to have been permitted by the trial Court. The prosecution was obliged to prove its case in the manner put forth in the charge sheet.

30. The prosecution was also unable to explain its failure to examine the son, Sagar, as a witness, despite recording his statement under Section 161 Cr PC. That he may have supported his father is not a sufficient justification for not examining him as a witness particularly since he was the only other person in the room who resided with the deceased and the Appellant, who could have thrown light on whether there was any odd taste noticed by any of them when they first consumed the *chutney* and then the coffee.

Aluminium phosphide poisoning

31. Mr. Singhal drew attention of this Court to the decision in ***Shri Nitish Yadav v. State ILR(2011) IV 461*** which again was a case of death by poisoning, the poison being aluminium phosphide. There the aluminium phosphide was detected by the FSL in the stomach and small intestine as well as pieces of spleen, liver and kidney. There too the opinion of the doctor who conducted the post-mortem was that the death was caused due to aluminium phosphide poisoning. The Court there discussed at some length the nature of aluminium phosphide. Aluminium phosphide was usually used as a rodenticide. Although it was not soluble in water “it actively reacted with water to form aluminium hydroxide and phosphine gas. Aluminium phosphide “as available commercially, has a very bad odour and smells like garlic and dead fish.” In that process this Court noted as under:

“Aluminium phosphide is usually formulated as a greenish grey tablet of 3 gm and the tablet has a typical odour of garlic or a dead

fish. It is further found that it is highly toxic and even 1/4th of a tablet is lethal insofar as the adults are concerned. It is an admitted position that aluminium phosphide is a greenish grey solid at room temperature and that phosphine gas which is produced by the reaction of aluminium phosphide in contact with water (even at ambient humidity), has an odour similar to garlic or decaying fish (because of the presence of impurities in the commercially available aluminium phosphide). Aluminium phosphide is not soluble in water but is highly reactive with water, and such reaction produces phosphine gas and leaves a residue of aluminium hydroxide which is not toxic.”

32. The Court in *Shri Nitish Yadav v. State* (*supra*) also noted:

“20. Most cases of aluminium phosphide poisoning are either suicidal or accidental and rarely homicidal (see : "Acute aluminium phosphide poisoning: An update; A. Wahab et al; Hong Kong Journal of Emergency Medicine 2008; 15:152-155). Aluminium phosphide is available in the form of 3 gm tablets or 0.6 gm pellets and also in sachets. The tablets, pellets or powder generally contain about 56% of Aluminium Phosphide (as the active ingredient) and 44% of Aluminium Carbonate (as the inactive ingredient). The aluminium carbonate component is added to prevent self-ignition of phosphine which is released when Aluminium Phosphide comes in contact with moisture or water. Phosphine is a colourless, odourless gas. But because the commercially available form of Aluminium Phosphide contains added inactive ingredients and impurities, when phosphine is released there is a distinct and strong smell of garlic or fish. Because of this distinct odour it would not be possible to pass off aluminium phosphide as some normal medicine. It can only be administered to an unwilling person through force.”

33. In the present case too it must be noticed that if indeed there had been an attempt to mix aluminium phosphide in either the coffee or the *chutney* it would have certainly given rise to a foul odour of dead fish which could not but have been noticed by the deceased or even the son. What it might have done to the taste of a substance with which it was mixed is an entirely

different aspect. It had to be shown that the substance with which it was mixed would still be edible as such. Here there were three persons consuming both the substances i.e. the *chutney* and the coffee. It is unlikely that none of them would have reacted to such a strange taste if indeed aluminium phosphide had been mixed with either the *chutney* or the coffee. There is nothing in the statement of the son Master Sagar (who incidentally was not examined as a witness) to the police (Ex.PW13/B4) which supports the prosecution in this regard.

34. The literature produced by Ms. Kolluru, learned APP on aluminium phosphide poisonings [Article by Mohan Gurjar published in the Journal of Emergencies Trauma, and Shock (2011 July – September, 378 – 384)] *inter alia* stated that phosphine gas is colourless and odourless in the pure form but due to the presence of substituted phosphines and diphosphines, it has a foul odour resembling decaying fish or garlic. The same article further notices that aluminium phosphide which is available in the names of ‘celphos, alphos, quickphos, phosfume, phostoxin, tatunex, degesch, syntume, chemfume, phostek or delicia [7.10.] is the active component as a mixture as it liberates highly toxic phosphine gas when it comes in contact either with atmospheric moisture or with hydrochloric acid in the stomach. [10-12]. Thus, tablets or pellets gradually lose their potency on exposure to atmosphere as they release phosphine gas and leave behind a nontoxic residue in the form of aluminium hydroxide.

Chain of circumstances not complete

35. The events that preceded the consumption of dinner by the three persons in the house viz., the deceased, the Appellant and their son, had to be

necessarily established by the prosecution without which the chain of circumstances would not be complete. The stage prior to the consumption of dinner by three of them was extremely critical to completing the chain of circumstances. Otherwise, there would be a huge unbridgeable gap in the narration of the case which leaves the chain incomplete.

36. It is trite that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a continuous chain of events from which the only irresistible conclusion that can be safely drawn is the guilt of the accused and no other hypothesis to the contrary should be possible. The law in this context has been explained succinctly in *Sudama Pandey v. State of Bihar* (2002) 1 SCC 679 as under:

“5. The law relating to circumstantial evidence, in clear and unmistakable terms, has been laid down by this Court in various decisions and it is sufficient to quote the statement of law made by this Court in *Tanviben Pankajkumar Divetia v. State of Gujarat* (1997) 7 SCC 156:

“45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to

rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that *the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.*"

37. As already been noticed, the motive for the crime has not been proved by the prosecution. That apart, the chain of circumstances is not complete. While the prosecution set out to prove that the rat poison had been mixed in the coffee consumed by the deceased after dinner and immediately prior to her death, that case obviously could not be established. None of the samples of the coffee consumed or even the contents of the cup which was used by the deceased had been sent to the FSL for examination. It appears that the case put forth in the charge sheet was given a go by.

38. The prosecution also failed to show that the *chutney* which was seized from the fridge was the actual source of the poison that ultimately killed the deceased. Even though the FSL report shows the presence of aluminium in the *chutney*, that by itself is not sufficient to conclude that it is the Appellant who mixed the poison in the *chutney* and somehow only that portion consumed by the deceased was poisoned. No chance prints on the cup which contained the *chutney* were lifted. In other words, there were too many critical circumstances that have been missed by the prosecution and

therefore it cannot be said that it has been able to prove all the circumstances in the chain beyond reasonable doubt so as to unerringly point to the guilt of the Appellant.

The external injuries

39. Learned APP focused on the external injuries found on the dead body. It has been pointed out that the evidence of PW-4 was categorical that these injuries proved signs of a struggle. In his cross-examination PW-4 stated: “the external injuries mentioned in the post-mortem report indicating assault/struggle might be caused due to body movement (*tadapna*) (to wriggle) on account of consumption of toxic substance.”

40. The above evidence is not sufficient to conclude that the deceased was forcibly administered the poison by the Appellant. That is not even the case of the prosecution. To reiterate, the case as set out by the prosecution was that rat poison was mixed by the Appellant in the coffee drunk by the deceased. During the trial there were attempts to show that the poison was mixed in the *chutney*, but for the reasons already noted this again has been unable to be established beyond reasonable doubt by the prosecution. The story is incomplete in this regard and the medical evidence therefore does not improve the situation.

41. It is possible that since the deceased was wearing bangles, as noticed in the crime team report and collected by them, that may have left marks around her wrists which could have been mistakenly taken as ‘external injuries’. While the presence of poison in her body is proved by the FSL report, the possibility of convulsions as a result of poison resulting in

involuntary movements in her body which may have caused the injuries on her lower back cannot also be ruled out. All of this raises doubts whether it could be said that it is only the Appellant who administered the poison.

Section 106 IEA

42. Unless the prosecution establishes certain basic facts which point to the guilt of the Appellant, to fasten the guilt on him only with the help of Section 106 IEA would be unsafe. In this case with the third person in the room, Sagar, the son of the deceased not being examined, the Appellant is entitled to the presumption under Section 114 (g) IEA i.e. the non-production of evidence by the prosecution leading to the presumption that such evidence would have been unfavourable to the prosecution.

43. The Court is unable to agree with the trial Court that only on account of the failure by the Appellant to satisfactorily explain under Section 106 of the IEA, how the deceased died, he should be held guilty of her murder. That inference cannot possibly be drawn on a complete reading of the evidence in the manner indicated hereinbefore.

Conclusion

44. In view of the foregoing discussion, this Court sets aside the impugned judgment and order on sentence of the trial Court, acquits the Appellant for the offence under Section 302 IPC and allows the appeal. The Appellant be set at liberty forthwith unless required in any other case. The Appellant will satisfy the requirement of Section 437A of the Cr PC to the satisfaction of the trial Court.

45. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 04, 2018

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