

(1980) 02 MP CK 0005
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 451 of 1976

Ashok Dubey

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 18-02-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 175
Penal Code, 1860 (IPC) — Section 302

Citation : (1980) JLJ 250

Hon'ble Judges : S.K. Seth, J; M.L. Malik, J

Bench : Division Bench

Advocate : Rajendra Singh, for the Appellant; S.C. Dutt for State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.—Appellant Dr. Ashok Dubey has been convicted u/s 302 of the Indian Penal Code for the murder of his wife Neerja and sentenced to suffer imprisonment for life.

2. Dr. Ashok Dubey, at the relevant time, was working in the Department of Forensic Medicine in the Medical College, Jabalpur. In fact, he belonged to the Pathology Department of the College, earlier having joined as a Resident Pathologist in the year 1968. Later he joined Army on 17th March, 1972 and left Army in March, 1973. He came back as Resident Pathologist in July, 1973. There was some little discord with the Head of the Department and the Dean, Medical College, asked Ashok Dubey to work in the Department of Forensic Medicine.

3. Dr. Ashok Dubey occupied Quarter No. F/52 on the First floor. The adjoining quarter was occupied by Dr. Balchandran (P. W. 3), which was separated by the stair-case. The two quarters on the ground floor, F/51 and F/49, were occupied by Dr. Ashok Kumar Khare (P. W. 4) and Dr. Agarwal. These four "F" type quarters formed a block, the stair-case leading to the first floor divided them into independent units.

4. Dr. Ashok Dubey married Neerja on the 6th of March, 1975. She was a healthy, good looking girl, (her photograph is Ex. P-10), coming from a respectable family. Her father Sukumar Pagare (P. W. 7) had once been a member of the Legislative Assembly; he was a political sufferer and a social worker. Neerja was M. A. in Hindi. Parents of Dr. Ashok Dubey were opposed to this marriage, probably on accounts of some caste difference. They did not join the marriage celebrations which took place at Hoshangabad. The marriage was performed according to Hindu (sic) and the bride came to live with the husband on the 8th March, 1975.

5. Dr. Bhagwat (P. W. 1) came to be posted as Lecturer, Forensic Medicine, and joined his duties on the 17th March, 1975, in the Medical College, Jabalpur. His posting in the Department of Forensic Medicine caused a little worry to Dr. Ashok Dubey, for he felt that he would be sent back to the Pathology Department to work under Dr. J. C. Gupta (P. W. 17), with whom his relations were not cordial. The letters Ex. P-13 and Ex. P-14 dated 17th and 18th March, 1975, which the appellant and Neerja wrote to Sukumar Pagare, indicate this little worry. They wanted Shri Pagare to manage things by exerting his political influence so that the appellant continued in the Department of Forensic Medicine. Dr. Bhagwat had come from Indore and was staying with Dr. Balchandran then, in the adjoining quarter F/50.

6. Sukumar Pagare and his wife wanted to come to Jabalpur to meet their daughter sometime towards the end of March but Mrs. Pagare met with an accidental injury and was not in a position to undertake journey. They postponed their visit. Letter dated 8th April, 1975, written by the appellant and Neerja, (which letter never came to be posted), refers to their concern over the injury received by the lady and their happiness over their prospective visit. The appellant had suggested that Neerja, if they so desired, could accompany them to Hoshangabad on their return.

7. 13th April, 1975 happened to be a Sunday. But the doctors usually go to the hospital for a round. Dr. Bhagwat (P. W. 1) left his quarter F/50 for the hospital at 9.30 A. M. He met Dr. Mogha who had come from Indore and took him round the Department of Pathology. An hour after, the appellant met him. He was smelling alcohol. It was nothing unusual for the appellant to smell liquor since he was a habitual drinker. They sat in Dr. Bhagwat's chamber. Dr. Bhagwat wanted to meet Dr. M. M. Dubey who lived in the town (the Medical College Campus where the appellant and Dr. Bhagwat lived, is more than 5 miles away from the town) but expressed that he had not seen his house. The appellant knew where Dr. M. M. Dubey lived and offered to accompany.

8. Dr. Bhagwat's testimony is that he wanted to pick up his sun-goggles. He and the appellant, therefore, first came to the quarter. He wore his goggles. The appellant took a glass of water. In about five minutes, they got down and went on a scooter to meet Dr. M. M. Dubey in the town. They returned from the town at about 4.30 P. M. The appellant asked Dr. Bhagwat to drop him at the foot of

Pisanhari-ki-Madia (a Jain temple on a hill, a furlong or two away from the Medical College Campus). Dr. Bhagwat dropped him there and came to his quarter. Dr. Balchandran was already there. They took a cup of tea. Dr. Bhagwat had a meeting to attend. So he got ready. Dr. Balchandran went for a bath. At about 5.45 P. M., the appellant entered Dr. Balchandran's quarter and spoke to Dr. Bhagwat, "She is burnt and dead". Dr. Bhagwat asked, "Who ?". The appellant said "My wife". Dr. Bhagwat then shouted for Dr. Balchandran to come out. Both the doctors, accompanied by the appellant, entered the adjoining quarter and saw the body of Neerja lying on the floor, in the room adjoining the kitchen, completely naked, burnt from head to foot, with half burnt underwear sticking to the body, the skin was charred. Near the body lay a stove of wicks with cork open, an empty bottle of kerosene oil and a can with a funnel and a burnt match-stick.

9. The three doctors came out when the appellant desired that the body should be covered by a sheet. They went in again and the appellant covered the body with a sheet. Dr. Bhagwat then went out to inform the Dean and the Hospital Superintendent. They had their consultations and Dr. Bhagwat was advised to ring up the police. He gave the necessary intimation to the police by phone. The Marg was registered vide Ex. P-77 at 19.40 Hours. The police went to the spot. The room in which the dead body was lying, was sealed. The investigation into the apparent cause of death was proposed to be done on the following day.

10. On the 14th morning, the Station Officer, Garha, summoned the appellant, Dr. P. D. Gupta, Dr. Balchandran, Dr. Khare and Dr. R. K. Gupta u/s 175 of the Code of Criminal Procedure (vide Ex. P-11) for the purpose of the investigation into the cause of death. The dead body was examined in their presence at 9.30 A. M. A Panchnama was drawn up (which is Ex. P-12). The body was then sent for post-mortem examination. Dr. K. S. Shrivastava (P. W. 9) conducted the post mortem examination at 3.10 P. M. His report is Ex. P-18. The report is very brief and reads:

It was the dead body of a young woman, aged about 25 years. Rigor mortis was present in upper and lower limbs. The body had burns all over from head to ankles. Feet intact. Tongue was protruding out about 1/2. Most of the skin had peeled off and deep burns in left iliac fossa upto the deep fascia. Both eyes were burnt. Smell of kerosene was coming out from the dead body.

On dissection: Congestion of larynx and trachea and both lungs.

Heart: Right side distended and left side empty.

Mouth : Piece oesophagus and pharynx congested.

Liver Spleen :

Kidneys:

Congested.

11. In the opinion of the autopsy surgeon, death appeared to have taken place within 12 to 24 hours of the post-mortem. The cause of death was asphyxia as a result of burns.

12. While the investigation into the cause of death was going on, the appellant was admitted into the hospital as a case of Barbiturate poisoning on 18-4-1975. He was discharged as cured on 9-5-1975. The appellant was prosecuted for attempt to commit suicide. The prosecution ended in his conviction u/s 309 of the Indian Penal Code on his admission. The appellant was fined Rs. 50 which he deposited.

The Garha Police did not proceed further with the investigation and submitted a final report.

13. Sukumar Pagare, father of the deceased, had grave suspicions that Neerja had died a homicidal death and the author of the crime was none else but the appellant. Upon his request, the Superintendent of Police, Jabalpur, entrusted the investigation to the C. I. D. The C I. D. took up the investigation. The autopsy surgeon was put certain queries--vide memo dated 26-10-1975 (Ex. P-82). The queries were answered by him vide his letter dated 27-10-1975 (Ex. P-83).

14. The post mortem report of Dr. K. S. Shrivastava and the Inquest Report were in the meantime sent to Dr. Hires Chandra, Professor and Head of the Department of Forensic Medicine in the Gandhi Medical College, Bhopal, for his expert opinion. He gave his report on 24-10-1975 (which is Ex. P-85) and his opinion was that in all probability, the victim had died of asphyxia due to throttling or smothering and not due to suffocation by irrespirable gases. His opinion about the time of death was within thirty six hours-three hours from the post-mortem.

15. Dr. Hires Chandra's expert opinion confirmed the suspicion of the C. I. D. that Neerja was murdered by the appellant during the night intervening 12th and 13th April, 1975, by throttling or smothering her and she was so extensively burnt by him that evidence of the commission of offence should disappear altogether, leaving no marks of injuries around the neck. Evidence was further created to misguide the police and make them believe it to be a case of accidental fire or suicide. The appellant came to be arrested on the 30th October, 1975. Upon a search of his residential quarter and other belongings kept elsewhere, his diaries and letters were seized, throwing light on his character and tendencies.

16. The appellant admittedly had sold a Nutan Wrist Watch for Rs. 150 to Surendrasingh (P. W. 19) on 24-8-1975, ornaments of gold-one necklace, a pair of Kangans, a pair of earrings and a ring to Ramniklal (P. W. 20) in the month of May or June, 1975, for Rs. 1800, furniture and utensils to Girdharilal for Rs. 1500 in October, 1975 and Saris for Rs. 750 through Prabhat Kumar (P. W. 30) at about the same time. The suggestion of the prosecution was that the sale of these articles indicated oblique motive. On the death of Neerja, Sukumar Pagare

had written to the appellant to return the ornaments to him. Instead of doing that, the appellant sold them away. Within a couple of months of Neerja's death, the appellant went out with proposals of remarriage. Some letters seized from his possession related to those proposals. A challan was accordingly put up.

17. The defence of the appellant was that on the morning of the 13th April, 1975, at about 9.30 A.M., he had gone to the Medical College along with Dr. Balchandran and Dr. Bhagwat. Neerja was alive when he left the quarter. That he stayed in the Medical College till 12.10 P.M. and then accompanied Dr. Bhagwat on his request to show him Dr. M. M. Dubey's residence in the town. They returned at 4.30 P.M. He asked Dr Bhagwat to drop him at Pisanhari-Ki Madia, as he wanted to have hair cut. So he was dropped there. When he reached home at 5.30 P.M. he found Neerja burnt and dead.

The appellant admitted that he was a habitual drinker and he had started drinking before the Police came.

18. The learned Additional Sessions Judge found the expert opinion given by Dr. Hires Chandra more credible. He found the death to be homicidal either by throttling or smothering, and to have taken place within 36 hours of the post mortem i.e. sometime between 1 A.M. and 5 A.M. of the 13th April. The irresistible conclusion, therefore, was that the appellant was the author of the crime.

19. In this appeal, the first and the most important question we are called upon to decide is whether the burns were accidental, suicidal or homicidal and if homicidal, what was the period of the burns. The autopsy surgeon's report, as we see, is scanty and grossly perfunctory, reminding us of Best's warning that "an expert witness largely presumes on the ignorance of his hearers and little does he dread prosecution for perjury. He feels he is living in a castle of his own which is impregnable. He sometimes collects data which is erroneous and deliberately false and bases his opinion sound enough for all appearances." And as Richard Harris has put it:

Another class of witness deserving notice is that of semi-professional. He is in fact semi everything, half veracious and half liar, his word is positive and his respectability comparative.....He combines with himself all the qualities which make up a deceptive witness truthful, false, dogmatic,, opinionative, clever, cunning and courteous. You could no more bully this man into telling a lie than you could persuade him to tell the truth. You can no more demolish his respectability than you can deprive him of his honest intentions. Tenacity of opinion is his weakness. He will sacrifice truth itself than give up his opinion.

20. The questions put to Dr. K. S. Shrivastava by the Public Prosecutor would reveal how deliberately suppressive the report had been made. The report does not mention the degree of burns, the percentage of burns, the presence or absence of carbon particles in the mucus membrane of the nose, nasopharynx, larynx, trachea and bronchi, whether the colour of the blood had changed into

cherry red due to absorption of carbon monoxide showing reactions of carboxy haemoglobin whether the burns were ante-mortem or post-mortem, the nature of blister formations, the line of tenderness, vesication and reparative processes even though the blisters had peeled off the presence or absence of petechial haemorrhage, the stomach contents whether digested or semi-digested, and above all the reasons for non-preservation of the viscera. These were vital points on which the autopsy surgeon should have furnished data. The tendency of an expert witness, as we generally find, is to substitute his judgment for that of the Court, forgetting that howsoever confidently he may speak, he is not infallible and the availability of authoritative treatises on the subject can be taken advantage of by the Judge in testing the correctness of his opinion. The medical witness when called as an expert, is not a witness of fact. His evidence as an expert is evidence of opinion, which the Court may or may not accept, depending on the data he has collected and the reasons he has given for coming to certain conclusion. The expert is a privileged person, no doubt, provided he discharges his duty intelligently, conscientiously and with a sense of responsibility. But slightest deviation from an honest labour brings him a charge of incompetence and even some-times of demonstrable corruption.

21. Handicapped as we are with the meagre data collected by the autopsy surgeon, we must yet find whether the death was due to accidental or suicidal burns or due to throttling or smothering, as opined by Dr. Hires Chandra, fire having been set to the body soon after, to conceal the evidence of crime. The data on which we have to act and which has been collected from the Inquest Report (Panchnama Ex. P-12) and the post mortem report, may be stated below. This was the data sent to Dr. Hires Chandra for his expert opinion:

(i) The body was found completely burnt from head to ankles. Both the eyes had been burnt. The degree of burn though not given in the autopsy report, should be fifth degree since the surgeon had observed penetration of the deep fascia and implication of the muscles, resulting in great scarring and deformity. The body had assumed pugilistic attitude, would be obvious from the Inquest Report (Ex. P-12). The body when seen at 9.30 A.M. on the 14th morning, was found rigid with flexed limbs, arms lifted and fixed, fingers hooked, the legs were fixed from the knees and twisted.

(ii) The body when seen at 9.30 A.M. had the tongue protruding about 1/2" beyond the teeth. A good deal of blood had oozed out of the mouth and nose and was found spread over.

(iii) The body had no ornaments, not even bangles, on the person. Except a half burnt underwear, the body had no remnants of burnt clothes, not even ashes around, to furnish evidence that the person had been burnt with clothes on. No fibres were found sticking to the body.

(iv) At the time of the post-mortem, most of the skin had peeled off

(v) The larynx, trachea and lungs were found congested, Liver, spleen and

kidneys were found congested. Oesophagus and pharynx were found congested. The right side of the heart was distended and the left side was found empty. These are internal signs of asphyxia, common to every type of asphyxial death whether asphyxia was due to suffocation or manual strangulation. Either because the burns were so extensive and deep around the neck region or for reasons best known to the autopsy surgeon, bruising of the tissues which is frequently accompanied by fracture of laryngeal structures and commonly the hyoid bone, as signs of strangulation, have not been noted either as a positive finding or as a negative finding. We would assume in favour of the appellant that bruising of the tissues around the neck or fracture of the laryngeal structures had not been found in the affirmative.

(vi) Rigor mortis was present in lower and upper limbs. Signs of early decomposition were also present.

(vii) Smell of kerosene present on the body.

22. With this data, accidental and suicidal burns should be ruled out altogether. Had accidental ignition of the Sari or Maxi or any other apparel was the cause of burn, the lady would have raised hue and cry for help, would have tried to rush out and would not have received so extensive and deep burns. Nor would she have smelled kerosene from her body. Suicidal death is likewise excluded. No lady of any respectability would denude herself and sprinkle kerosene on her person to set fire. She would not like her dead body to be found without any apparel. Nor would the lady burn without this media of cotton or synthetic clothing. The body contains a large percentage of water (72 percent) and this tends to dampen the combustion.

In the present case, the body was found without any remnants of clothing, not even ashes. The degree and percentage of burns leave us in no manner of doubt that the burns were homicidal. Eyes normally do not get burnt completely, as they were in the present case. The learned Advocate for the prosecution contended that the eyes were deliberately burnt to avoid detection of subconjunctival haemorrhages. Be that as it may, the deep burns in the eyes were not possible in a suicidal case. The suicidal death by burns is so painful that the victim would necessarily have shrieked in agony and would have run about knocking things around. That would have attracted attention of the neighbours. Besides, it would be pertinent to note that no box of match sticks was found near-about. What was found was just one burnt match-stick.

23. It inevitably follows that the death of Neerja was homicidal. Both the medical experts have agreed that the death was asphyxial. It was not due to shock. According to Dr. Shrivastava, the death was due to suffocation caused by inhalation of irrespirable gases like carbon dioxide and carbon monoxide. But if that were so, the doctor should necessarily have found carbon particles or soot in the mucus membrane of the nose, naso-pharynx and respiratory tract. He should also have noticed the colour of the blood having changed to cherry red, giving

reactions for carboxy haemoglobin. Every standard treatise on medical jurisprudence, i. e. Taylor's Glaister's and Modi's, says that the strongest confirmatory proof is the presence of soot particles in the naso-pharynx and the respiratory tract if burning has taken place when the victim was alive. The absence of soot particles in the respiratory system, on the other hand, indicate that the body was burnt after death, in order to conceal the criminal acts of violence. Dr. Hires Chandra in para 24 of his deposition says that the carbon particles in such deaths are found as adherents to mucus membrane and are visible to the naked eye. Microscopic examination though considered necessary, the soot particles could yet be seen sticking to the respiratory system and particularly when the media of burning is kerosene oil. Similarly, Dr. Hires Chandra says that the change in the colour of the blood could be noticed by the naked eye. (See para 8 of his deposition). The learned counsel for the prosecution drew our attention to figure 81 at page 206 of Glaister's Medical Jurisprudence and Toxicology (13th Edition). Carbonaceous material in air passages is visible to the naked eye. A dissected piece of trachea preserved in the hospital jar was also shown to us as an illustrative case. Carbon particles could be seen by the naked eye. No microscopic examination was needed.

24. Dr. Hires Chandra points out in his report, naturally on the basis of standard treatises, that the following positive findings in asphyxial death by suffocation, particularly when the kerosene oil is the media, are noticed.

- (a) Soot in the trachea and larynx.
- (b) Colour change of the blood either to bluish violet or cherry red.
- (c) The character of the blood should be fluid and thick.
- (d) The serous cavities should contain fluid.
- (e) The heart chambers should be full of blood.
- (f) The great vessels must be engorged with blood with also general venous congestion.
- (g) The pleura should be congested and inflamed.
- (h) The brain and its coverings should be oedematous and congested.

The autopsy surgeon, having not noticed any of these findings, asphyxial death by suffocation, he says, is ruled out.

25. Dr. K. S. Shrivastava was pertinently asked by the counsel for the prosecution whether he had noted down everything that he had observed. His answer in para 8 was : "whatever I observed during the post mortem of the dead body, I have made mention of the same in Ex. P-18". It follows logically, therefore, that he had not noticed any of the findings as aforesaid on else he would have mentioned them.

26. The death by strangulation or smothering is further established by the

position of tongue and the fact of blood having oozed out through the mouth and nose in sufficient quantity. Dr. Hiresh Chandra has excluded in the present case the possibility of protrusion of the tongue due to decomposition. The post-mortem report says that the rigor mortis had not completely passed off and the decomposition was at its early stage. The tongue usually protrudes as a result of decomposition, but at a very late stage, when simultaneously the lips must swell, the tongue must swell, the lips must get everted and the faecal matter must usually come out with sphincter dilating. This is a stage when gases collect in the tissues, cavities and hollow viscera, under considerable pressure, with the result that the features bloat and distort, eyes are forced out of the socket, the tongue protrudes and a frothy and reddish fluid or mucus is forced from the mouth and nostrils. The post mortem report does not say that this stage of putrefaction was reached. An early stage of decomposition when the body had not bloated and swelled, would not throw out the tongue nor spill the blood out of the mouth and nostrils in that quantity.

26. Dr. Hiresh Chandra was questioned in his cross-examination if the protrusion of the tongue could possibly be due to the tongue getting compressed between the teeth, as an expression of agony. That sometimes happens. The answer was that in such an event, the blood would not ooze from the mouth and nose in that quantity as was found gathered near the dead body.

27. The data furnished by the Inquest Report and the post mortem report irresistibly point towards the death of Neerja being homicidal. Dr. Hiresh Chandra's opinion is definitely more credible than given by Dr. K. S. Shrivastava. The authoritative treatises amply support the opinion of Dr. Hiresh Chandra.

28. Now the next important question to consider is the time of death. The data on the basis of which the two doctors gave their opinion, is:

- (a) Rigor mortis present in the lower and upper limbs and
- (b) Presence of early signs of decomposition.

According to Dr. Shrivastava, the duration of death was within 24 hours of the post-mortem. According to Dr. Hiresh Chandra, it should be within 36 + 3 hours of the post mortem. The difference is almost of 12 hours, one makes it at about 3 P. M. and the other at about 3 A. M. If we accept Dr. Shrivastava's opinion, the appellant has an iron-clad alibi. He was with Dr. Bhagwat right from 12 in the noon till 4.30 P. M. returned home after 5 P. M. and found Neerja burnt and dead. If Dr. Hiresh Chandra's opinion prevails with us, the appellant is doomed. He was the person in company and his wife at that hour of the night and he alone could have committed the crime.

29. Both the doctors agree with Modi's observations at page 121 : Modi's Medical Jurisprudence and Toxicology, 18th Edition, that in general rigor mortis sets in 1 to 2 hours after death, is well developed from head to foot in about 12 hours, is maintained for about 12 hours and passes off in about 12 hours. Modi

has further observed that during winter, the usual duration of rigor mortis is 24 to 48 hours, while in summer, particularly in Northern India, it is 18 to 36 hours.

Dr. Hires Chandra has worked on the basis of these observations find his own experience in the field. According to him, two factors should slow down and delay occurrence of rigor mortis: (a) that this was a body of healthy, adult lady and (b) onset is delayed in asphyxial deaths (Modi at pages 122-123).

30. Both the doctors, as we are inclined to say, seem to have overlooked that the body with which they were dealing, was found burnt from head to foot, a case of 100 percent deep burns; the body had assumed pugilistic attitude, inasmuch as, the arms were lifted and fixed and so were legs. How would rigor mortis appear and pass off on a heat stiffened body, was the real question which should have attracted their attention. We propose to quote Taylor and Glaister from their books of Medical Jurisprudence and Toxicology:

Taylor's Medical Jurisprudence (12th Edition at page 86):

All muscle protein in the body is coagulated at temperatures above 65° C. When a body is subjected to temperatures above the coagulation point of the muscle protein a rigidity is produced, which, if complete, is far more intense than that found in rigor mortis. Changes in posture, specially of the limbs, may follow upon muscle contractions e. g. in burning cases. This heat stiffening cannot be broken down by extending the limbs as in rigor mortis, and it will persist until disintegration occurs.

Glaister's Medical Jurisprudence and Toxicology (13th Edition) at page 215:

Heat--stiffening occurs in bodies exposed to intense heat by burning or immersion in hot liquids and is due to coagulation of the albuminates in the muscles. Rigor mortis does not supervene in such cases and the primary rigidity persists until the onset of putrefaction. From the position assumed by the limbs, which stimulates the general attitude of a boxer, the term "pugilistic attitude" has been applied to this condition.

31. Dr. K. S. Shrivastava was questioned whether he could differentiate heat stiffening from rigor mortis and whether it was a case of heat stiffening persisting rather than rigor mortis continuing or passing off. The doctor evaded giving answer to the query. We know it from the inquest that the body had stiffened due to deep burns and this rigidity must persist until the onset of putrefaction. Rigor mortis would not supervene in such a case.

32. Duration of death on the basis of rigor mortis could not, therefore, be determined with any amount of certainty. Heat stiffening may have been confused for rigor mortis.

33. The other data i.e. presence of early signs of decomposition, is again deceptive. The normal rule is that "putrefaction follows the disappearance of rigor mortis, but that is not always the case, since during the hot months from

April to October, it may commence before rigor mortis has completely passed off from the lower extremities." (See: Modi's Medical Jurisprudence --18th Edition at pages 124-125). Cases have been noticed by Modi where colour changes, the characteristic feature of putrefaction, have occurred within 12 to 18 hours.

34. Here again, we must not forget that there is fluid loss in a case of burn and "dehydration tends to retard the course of decomposition throughout its course." (See Taylor's Medical Jurisprudence-12th Edition at page 94). Dr. Hiresh Chandra in para 31 of his deposition, has said:

In burn cases there is fluid loss, the body surface has got the heat effect. The putrefaction will in such conditions be delayed.

This statement of Dr. Hiresh Chandra has the support of Taylor's treatise. Dehydration arrests putrefaction is also a matter of common experience. Roasted or boiled meat can be preserved for a longer time than raw meat.

35. Let the data of rigor mortis and the early, signs of decomposition not deceive us any longer. A cooked and stiffened body as it was, would show putrefactive changes many hours after the normal dead body placed in similar environment. We, for reasons stated above, have come to a definite conclusion that the duration of death was within 36 + 3 hours of the post mortem, as determined by Dr. Hiresh Chandra. Dr. Shrivastava's opinion on the point of duration was absurd on the face of it. The police requisition for post mortem had mentioned that the dead body was for the first time seen at 5.30 P.M. on the 13th. The post mortem examination was being performed at 3 P.M. on the 14th i.e. after about 22 hours. To fix the lower limit of duration at 12 hours of the post mortem, was foolish. To fix the outer limit at 24 hours, left the time gap of 2 hours only for the offence to have been committed. Now imagine a situation when the lady is all alone in her house. Someone comes in at about 3 P.M., strangulates her, denudes her completely except for an underwear which remains on her body, sits there to pour kerosene oil over her and burns her bit by bit. A nude body would not catch fire easily. Some media of cotton or other fibre must be used. Foul odour of a burning cloth would then attract attention of the neighbours downstairs and those living in the adjoining quarter. The lady before strangulation, would offer some resistance and would also raise alarm. That may not go unheeded. Would any man take that risk at that hour of the afternoon when there are persons living in the side quarter and quarters downstairs? One can understand his coming in and leaving the lady dead after strangulating her; but he would not set fire to her after removing her clothes. He would rather run out unnoticed. The author of the crime in the present case, must have patience enough to collect things and arrange them in a manner that for all appearances, the death should appear suicidal. And before he leaves the place he must pick up a stool or climb over the hold-drop, put his hand through the ventilator and bolt the entrance door from inside. This feat has again to be performed unnoticed. Construct the story in whatever manner, it would be incredible. The offence of this type could not possibly be committed between 1 and 3 P.M.

36. We have in evidence of Dr. Balchandran that the appellant told them that when he returned home that evening, he found the entrance door bolted from inside; he knocked at the door for some time but when no response came from inside, he broke open the door and found his wife burnt and dead. The learned counsel for the appellant argued that this part of the statement of Dr. Balchandran should not be believed for two reasons: (i) that Dr. Bhagwat who was present when the appellant spoke thus, did not corroborate Dr. Balchandran and (ii) that Dr. Balchandran's police statement was silent as regards the appellant telling him that he had to break open the door to effect an entry.

37. We scanned the appellant's statement u/s 342 of the Code of Criminal Procedure (old) to find as to what he had to say on this vital issue. Did he find the door bolted from inside or was the door found unbolted ? To our dismay, the appellant had said nothing. He avoided giving an answer. If the door was found unbolted, suicidal death was ruled out. If it was found bolted, there was no evidence that the door had been broken open and the appellant's statement to Dr. Balchandran that he effected an entry by breaking open the door, was false.

38. Dr. Balchandran's statement appealed to us worthy of credence. He was a friendly neighbour and there was apparently no reason why he should speak a lie. The appellant's earliest version to him was that he had broken open the door to effect an entry. And the appellant was belied by the inspection of the door which was found in perfect good condition, even the bolts inside had not been unhinged or found twisted.

39. On a careful appraisal of evidence, we have come to a definite conclusion that the entrance door was not found bolted when the appellant came home that evening or else, he would have knocked at it, softly to begin with and then loudly and violently. The neighbours downstairs including Dr. Bhagwat and Dr. Balchandran in the side quarter would have heard the knocking. The appellant would not climb the Hold-Drop to put his hand through a ventilator to open the bolt. That feat he would not perform when he could easily obtain a stool to stand on. And before he did that, the neighbours would at once know that something unusual had happened. The evidence is that no knocking was heard by the neighbours Dr. Bhagwat, Dr. Balchandran, Smt. Khare (P.W.2) and Dr. Ashok Kumar Khare (P.W.4). Every thing was quiet since early morning till 6 P.M., when the dead body was discovered. The neighbours did not see Neerja at the door or at the windows, did not hear her voice (they said, she occasionally hummed or sang, and they could hear her voice downstairs) nor commotion of any type. They smelt no burning of cloth or of kerosene oil. P. W. 32 Mahendra Kumar Khare, who was living with his brother Dr. Khare downstairs, did say that he had heard the knocking of the door upstairs, but his statement could not be believed because he had told to the police earlier that he had not heard any knocking of the door that evening. The witness was confronted with his police statement, Ex. P-80, portion marked "A" to "A" and his credit stood impeached.

40. As said above, we have come to an irresistible conclusion that the offence

was not committed in the afternoon of the 13th or else some little commotion, some bad odour of burning cloth or burning body, would have attracted the attention of the neighbours. It necessarily follows that the offence was committed at a time when the neighbours were in deep slumber and the odour of cloth or kerosene burning could but little disturb their sensitivity.

41. The learned counsel for the appellant very vehemently argued that an important witness by name Sukhram had been given up by the prosecution, though shown in the list of witnesses, and the appellant was seriously prejudiced in his trial. The counsel said that he had moved an application on 16-4-1976 that this witness Sukhram had seen Neerja alive at 1 P.M. on 13-4-1975. Neerja had given him a hundred rupee note for change into smaller currency notes, which the witness had brought from a Kirana shop. Such was Sukhram's statement when questioned by the police on the 14th. A copy of that statement had been supplied to the appellant on demand. Naturally, the appellant could have used the statement u/s 145 of the Evidence Act, had he been examined as a prosecution witness. The appellant could not have utilised the statement if he were to examine Sukhram as a defence witness or even if he were to be examined as a Court witness (see *Shakila Kadar v. Nausher* A I R 1971 S C 1324). The prayer in the alternative was that the witness be tendered for cross-examination as could be directed in view of the observations made by the Supreme Court in *State of U.P. and Another Vs. Jaggo alias Jagdish and Others*, . The counsel for the State then opposed the prayer saying that there was no provision in the Code of Criminal Procedure for tendering a witness for cross-examination and that witness having been won over, and even otherwise, being hopelessly unreliable in view of his later statement made to the police during investigation of the crime, the prosecution in its discretion was not inclined to examine him.

42. Before the Court could pass any order on the appellant's application dated 16-4-1976, the counsel for the appellant declared on 22-4-1976 that he would not insist on the witness being examined by the prosecution or being tendered for cross examination. That being so, the contention of the counsel now in appeal, of prejudice due to withholding of a material prosecution witness or that the prosecution had some ulterior motive in withholding him, has no meaning; see *Shankar v. State of U.P.* (1973) 3 S C C 851 (para. 14).

43. It would be pertinent to note that the prosecution had come with a positive case that the offence was committed during the night intervening 12th and 13th April, 1975; that the victim was strangled to death and then deeply burnt so that all signs of strangulation should disappear. (See the challan). It was not the prosecution story that Neerja was done to death sometime at 10 A. M. on the 13th and that Sukhram who was the domestic servant of Dr. Balchandran, had witnessed the incident. Sukhram's statement was recorded on 30-11-1975 by the C. I. D. investigating into the offence, and the statement he made was that he had seen the appellant catching hold of Neerja's neck and giving blows. That

was sometime after Dr. Bhagwat and Dr. Balchandran had left for the hospital. The witness said that after the appellant killed the lady, he knocked at his door, gave him a hundred rupees note and asked him to bring change. He said, he was threatened with dire consequences if he narrated the incident to anyone. He was asked to tell anyone who questioned him that the lady had given him a hundred rupee-note for change.

44. In referring to different statements made by the witness at the inquest stage and at the stage of investigation into the offence, we may not be misunderstood to have read the statements as evidence for or against, or in seeking confirmation of our opinion one way or the other while appreciating evidence. We have in mind that use of the case diary statements for such purpose is absolutely prohibited: See *Habeeb Mohammad Vs. The State of Hyderabad*, , para 13. The reference has been made to his statements only to show that he was a self condemned liar. Placing him in the witness box was apt to create confusion. The prosecution was better advised not to examine him when it itself distrusted him. It was not the duty of the prosecution to call a witness and proceed almost automatically to discredit him by cross-examination. See *Stephen Seneviratne v. The King* A I R 1936 P C 289.

45. We offered to the learned counsel for the appellant that the witness could still be called as a Court witness if so desired and the Court would put to the witness all relevant questions with respect to his previous statements. But the Court at the same time felt that it was not going to serve any useful purpose. The earlier statements were conflicting and irreconcilable and his credit, therefore, stood completely shaken. Neither statement would infuse confidence. The counsel for the appellant was hesitant to accept our offer for two reasons. Firstly he said, the witness might come very much under the influence of the police and secondly, a Court witness could not be cross-examined on the basis of his police statement and the Court's questioning by invoking powers u/s 165 of the Evidence Act was not the same thing as cross-examination by a defence counsel.

46. Be that as it may, we are of the view that Sukhram was not a material witness for unfolding the narration of the events on which the prosecution was essentially based. The prosecution distrusted him for being an eye-witness or else the charge-sheet would have been so drawn up giving the time of incident at 10 A.M. on the 13th April. Instead, the charge-sheet said that the crime was committed during the night intervening 12th and 13th. The prosecution was then under no obligation to tender him as a witness. The prosecution knew that he was not speaking the truth and fairness of the trial lay in withholding him. No adverse inference could arise in such a situation against the prosecution.

47. We may incidentally point out that the prosecution was under no obligation to furnish copy of Sukhram's statement recorded u/s 174 of the Code of Criminal Procedure. The statutory obligation was to furnish copies of such statements as were recorded u/s 161(3) of the Code, provided the prosecution proposed to

examine those witnesses. We might cite with approval the observations made in *Palaniswamy Vaiyapuri Vs. State*, :

Although the proceedings u/s 174 amount to investigation, in terms, the provisions of section 173(4) do not apply to the statements recorded u/s 174. The case of the statements recorded u/s 174, does not fall under any of the categories listed in section 173(4). Under the scheme of the provisions of Chapter XIV two categories of investigation have been contemplated. The first category of investigation begins with information in cognizable cases referred to in section 154. This investigation comes to an end when a charge-sheet or a challan is submitted u/s 173. The provisions of sections 174 and 175 afford a complete and autonomous code in itself for the purpose of inquiries in cases of accidental or suspicious deaths u/s 174. Hence the accused would not be entitled to ask for copies of such statements as a matter of right u/s 173(4) so far as the statements of witnesses examined in the course of the inquiry instituted u/s 174 is concerned.

Though there may not be an obligation on the prosecution for supplying copies of statements recorded u/s 174 to the accused the interests of fair trial do require that copies of the statements recorded u/s 174, are made available to the accused at the proper time. That has preceded the investigation and recording of the statements u/s 161. The defence is expected to know what was the purport of the statements recorded at the earlier stage. The other reason for supplying copies of the statements recorded u/s 174 is that if the diary is not maintained then the prosecution will lay itself open to the charge that the statements have been tampered with or ante-dated.

48. Copy of the statement recorded u/s 174 of the Code of Criminal Procedure having been furnished in the present case, any discussion on the subject whether the prosecution was or was not obliged to give a copy, would be just academic. We need not therefore, dwell with the matter further. All that we would like to say is that the police case diary might contain statements of a number of witnesses some narrating the incident one way and some in order to misdirect the investigation, just the other way. Choice must be left with the prosecution to call those witnesses whom they trust. Sukhram's statement was found by the investigating officer intrinsically untrustworthy. Though initially shown in the list of prosecution witnesses, better counsel dictated that he should be dropped out. It was no use calling him as an ocular witness when his statement to the police recorded u/s 161 of the Code of Criminal Procedure, on the face of it, was unbelievable.

49. Now coming to the motive part, it is no doubt true that the question of motive is of great importance in a case depending on circumstantial evidence. But where the circumstances can lead but to one conclusion of guilt, the non-establishment of motive is not crucial. Every act has a motive behind it and sometimes the motive is elusive and undetectable. To quote Wills:

There is hardly any voluntary act without motive. If any act is found to be totally devoid of motive, not unnaturally is one prone to attribute it to unsound mind. Man being a creature of passions and affections and gifted with reason and choice, there is scarcely a human act not motivated by something or other, however elusive and undetectable the underlying motive may sometimes happen To be.

The commonest inducements to acts are the desire of revenging some real or fancied wrong; of getting rid of a rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden; of obtaining plunder or other coveted object; of preserving: reputation, either that of general character or the conventional reputation of profession or sex; or of gratifying some other selfish or malignant passion.

50. Motive for the crime is not always visible except to the person influenced by it. The experience shows that some of the gravest and the most atrocious crimes have been committed from some of the flimsiest and most frivolous considerations. "The motives of men are often so deep seated as to be unfathomable; the devil itself knoweth not the mind of man; and if law required proof of motive in every case, and adequate motive too, the task of bringing offenders to justice would be so great as to defeat the very object for which penal laws are enacted." The Penal Code, therefore, does not insist on motive as an ingredient for any offence.

51. The case in hand presents this difficulty and motive is a matter for guess from the appellant's character and conduct. Evidence of character, conduct and state of mind is admissible under sections 8, 14 and 53 of the Evidence Act. In *Habeeb Mohammad v. State of Hyderabad* their Lordships-said:

In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when the character of the person by whom they are done is known. Even on the question of punishment an accused is allowed to prove general good character.

52. The appellant as we know him from his diaries and letters, is a man with abnormal psychology, a sex pervert and an alcoholic addict, it would be better to give here some little relevant extracts from his letters and diaries:

Diary of the year 1972 : Monday, 21st August:

Referred to Psychiatrist. Admitted in Psychiatry Wing Command Hospital. Interview with Maj. (Mrs.) N. L. Rao classified specialist in Psychiatry.

12th and 13th September, 1972;

My dependency upon sleeping pills (Barbiturates") is no more a secret. Maj. (Mrs.) N. L. Rao (classified specialist in Psychiatry) has come to know it. She has confiscated my 500 sleeping pills (Gardinal), and she has robbed me of drug

induced sleep. God deprived me of natural sleep many years ago. Hatred for drug addicts is as old as Odysseus wanderings. Ancient lotus, mythical and mystic, seems to me as real as modern sleeping pills. Drug addiction is not a new pattern of reaction to intrapsychic and inter personal conflicts. Natives of Syrinu ate lotuses and lived happily, oblivious of undesirable life". I am afraid of vengeance of Nyx; I will have to face callous and cruel and merciless Nyx, because I cannot ignore her even if I want, because I do"nt have sleeping pills. I experienced great difficulty in falling asleep. I do"nt remember when I fell into sleep. I feel, I fell into sleep in the late hours of nights. The sleep was shallow and full of vivid dreams and unpleasantness was the core of each and every dream. Fortunately, unpleasant hallucinations specially visual and auditory did it torture me. I averted appearance of dreadful visual hallucinations simply by fixing thoughts at Perviz, a frail little beautiful figure. Pretty face. Wrapped in joy.

Diary of the year 1974 27th January:

Am I really mentally prepared to enter the married life ? I feel I am Can it be a fake belief. Girls fear to marry me because I drink. I am, no doubt, a dangerous drinker. I can be dangerous to myself as well as to others when I am really drunk.

I have some strange peculiar ideas. Will she accept or make compromise with my ideas which do not conform with the common conventions of the society. Will I be able to curb my homosexual proclivities after marriage ?

22nd April:

I am passing through very bad days. My enemies are increasing and friends are decreasing in number. Noisiness irritates me. I feel like beating blue and black those who laugh with barbarous glee. I am losing interest in my life. Murder, rape, sodism, exert fascination on my mind. Am I mentally ill? I feel I am. There is a suicide in me.

Desire of homo-sexual play with him haunts my mind day in and day out. I want to hold his hard erect organ in my hands. I want to suck his penis. I wish him to penetrate his penis into my mouth. My mouth is yearning to experience his penile strokes. I want him to ejaculate in my mouth. I want him to taste his semen. I want to have anal intercourse. I am eager to palpate his pulsating penis. I want to sin with him. When I masturbate I fancy him lying naked close to me.

Diary of the year 1975:

18th April:

In the morning I drank 375 ml. of hercules XXX Rum and then swallowed 40 tab. of Gardenal (60 mg. each) and 11 tab. ethobral (triple barbiturate). I wrote some letters while I was drinking and weeping. I lied on the bed.

Extract from a note-book (Ex. P-4):

Will you tell me what is sin. I drink. I spent sleepless nights with pleasant prostitutes. I sex with girls with their consent but I refused to marry them because I did not deign them worth marrying. I indulged in homosexual love. I indulged in homogenitility, I married a girl of 27. I loved her. She did"nt feel my love for her. My love was mute. My love is dumb and expressionless right from the beginning of my life as self-conscious individual. I am suspicious of existence of love in me. I am well familiar with hatred, bitterness, cruelty and revenge which I learnt by heart in my so-called home. I want to love someone and I want to be loved by someone but I don't know how to love.

Letter Ex. P-46 dated 14th December, 1972 to Homi:

My life seems to be a case of self destruction. Wine has been eating into my vitals for the last four years. I want to give up drinking but some sinister obsession compells me to cling to drinking. My memory is growing weak; my intellectual functions are deteriorating. I'm losing my power to concentrate on my works and books. I was a voracious reader hut now I am a poor reader. Homi, I want to get out of this sut inertia, but I do"nt know how to put to an end to this dreary dreadful way of life.

53. We stop here and ask the following questions;

(i) Had this degenerate character with perverted cravings, having exterior that bore marks of gentility and respectability, potentially murderous tendencies ?

(ii) Was he a sexual psychopatch, extremely self-centred, incapable of keeping his sexual behaviour within the bonds of social acceptance?

(iii) Was it that he wanted the victim to permit him anal intercourse or wanted her to suck his penis, to which she would not agree ? "Once an abnormal direction is assumed, it tends to take on a compulsive character and to take the whole personality with it." Was it that refusal of the wife to yield invoked sodism ?

(iv) "An individual, for whatever reason, who is incapable of keeping within the borders of approved behaviour in the culture in which he lives, may well experience a tremendous loss of capacity to satisfy the demands that life imposes. He either withdraws to himself and becomes a brooding individual given to fantasies which drive him to a psychiatrist for treatment or on the contrary, he may burst out into variable orgies of brute aggression. The tension may find expression in some form of abnormal behaviour. Perversion tension predisposes the individual to other criminalities. "Crime-committing situations often hold him in." Was it that this homo sexual, frustrated on Neerja"s refusal to play unnaturally with him, was psychologically affected with feelings of inferiority and insecurity and behaved like a pyromaniac ? Was he afraid that Neerja would disclose to her parents his perverted tendencies which would bring him indignity and humiliation ? (The parents, as the evidence goes, were coming on the 15th to meet their daughter. The incident took place on the 13th).

(v) Was it that inner craving for homosexual pleasure was not diminished though

the appellant got married ? Was it that the appellant made no secret of it to his wife ? Was the letter Ex. P-9 dated 27th April, 1975, addressed to Neerja, indicative of those frustrated feelings ? (The letter says, "I cannot give you what you want and you cannot give me what I want. Our married life will end in fiasco."

(vi) Was the appellant an alcoholic psychotic with abnormal emotional sensitivity and feelings of resentment ? Did he think of an escape from the pressing intrapsychic conflicts by behaving in this foolish way ? [References : Sex Perversions And Sex Crimes by James Melvin Reinhardt and Abnormal Psychology by Carney Landis and M.M. Marjorie Bolles.]

54. The appellant's diaries and letters to his homosexual friends, if they were to be placed in the hands of a psychiatrist with the history that he was once admitted in the Hospital in 1972 for treatment, he would, in all probability, say that this psychopath is a blundering irresponsible personality, a person with accentuated sex propensity which could convert him into a Don Juan or a rapist; his whole range of personality had been degenerated and that he needs treatment. Sitting as Court, the abnormal psychology of this man, does neither make him insane nor mentally defective. He cannot escape responsibility for any crime that he commits.

55. The appellant's subsequent conduct also exhibited these abnormal tendencies. He tried to commit suicide, and hardly a month or two passed, the first girl who smiled at him in the Office of the advocate, he went out with an offer of marriage, or for ought we know, the secret meeting proposed to the girl in a Cinema Hall was the usual advance of a seducer (See : Ex. P-6 to Ex. P-8). He tried to meet another girl, his own student of the College, in the Girls' Hostel. His visit in a drunken state was a nuisance. A complaint was made to the Dean of the Hostel, who naturally was annoyed. The girl went to her local guardian, who in turn lodged a serious complaint against the misbehaviour of the appellant.

56. The learned Additional Sessions Judge, from the circumstance that the appellant had sold out ornaments, furniture, utensils and Saris within a couple of months of Neerja's death and had been running after girls, felt that the motive for the crime would be his greed for money, which the second marriage was likely to bring to him in the shape of dowry. We, on our part, would not like to attribute such a motive to him. He was so associated with the victim that the advantage of inheritance was bound to accrue to him. Then followed his prosecution and he needed money. Placed in such a situation, he sold out the ornaments. Just for that reason, it could not be said that he had that motive for murder.

57. Motive, as said above, is elusive and undetectable. The neighbours never heard them quarrelling. For all appearances, the newly wed couple seemed happy.

58. To recapitulate the circumstances that have been fully established by

evidence: (a) Neerja died a homicidal death. The cause of death was strangulation or smothering. The time of death was within 36 hours + 3 hours from the post mortem i.e. sometime between 1 a.m. and 5 a.m. on the 13th morning Admittedly, the appellant was with victim at that hour of the night, (b) The body of the victim was deeply burnt so that all external signs of strangulation should disappear, (c) The body was found with only a half burnt underwear sticking. Evidently, she was in the bed with the husband, (d) the burning was done at an hour when the neighbours downstairs and in the side quarter were in deep slumber and the odour of kerosene-burning could but little disturb their sensitivity, (e) No ornaments were found on the person of the victim. They were removed before the body was burnt, (f) The milkman was already told a day earlier that milk was not needed on the 13th morning, (g) The neighbours did not see Neerja that morning at her windows or at the door. They did not hear her humming or singing, as they occasionally did. Everything was quiet in Quarter No. F/52. (h) Though the appellant came along with Dr. Bhagwat to Dr. Balehandran's quarter and took a glass of water there, he did not peep into his own quarter just to say "Hello" to his wife and to tell her that she need not wait for him for the lunch. Such an indifference for a husband, when the couple was newly married, was something of an unusual conduct, (i) When the appellant returned home at 5.30 p. m., nobody heard him knocking at the door. If the entrance door was found bolted from inside, he would have knocked at it violently, attracting attention of the neighbours. Though the door was left unbolted, the appellant gave out to Dr. Balchandran that he had to break open the door to effect an entry. Why did he make this untrue statement? (j) The degenerate character of the appellant in judging his criminality.

These circumstances are consistent only with the hypothesis of the guilt of the appellant. The circumstances are of conclusive nature and tendency and leave no reasonable ground for a conclusion consistent with his innocence. The appellant has been rightly found guilty of the offence of murder of his wife Neerja.

59. The appeal is dismissed. We must record here our strong condemnation for the perfunctory, superficial and misleading post-mortem examination conducted by Dr. K. S. Shrivastava. A copy of the judgment may, therefore, be sent to his Head of the Department and one to the Indian Medical Council to assess him for his professional ethics.