

(2001) 01 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 214 of 2000

Budhi Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 162, 162(1), 313

Evidence Act, 1872 — Section 145

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2001) 1 ShimLC 428

Hon'ble Judges : M.R. Verma, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Ashutosh Burathoki, for the Appellant; B.P. Sharma, Additional A.G. and G.S. Guleria, Law Officer, for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—This is an appeal by the Appellants-accused (hereinafter referred to as "the accused") against the judgment dated 29.4.2000/1.5.2000, passed by the learned Additional Sessions Judge-II Kangra at Dharamshala, whereby, the accused have been convicted and sentenced as under:

-----	Name of
the accused	the accused
Offence	for which
-----	Sentence imposed
-----	convicted
-----	(1) (2)

(3) ----- 1.
Budhi Singh Under Sections (i) Rigorous imprisonment for two years 498A, 302, 201/34 and a fine of Rs. 1,000 and in default of I.P.C payment of fine to undergo simple imprisonment for a period of six months, u/s 498A I.P.C.

(ii) To undergo life imprisonment and to pay a fine of Rs. 2,000/-and in default of payment of fine to undergo simple imprisonment for one year under Section 302 I.P.C.

(iii) Rigorous imprisonment for a period of one year and a fine of Rs. 1,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months u/s 201/34 I.P.C.

2. Ram Saran 201/34 I.P.C. Rigorous imprisonment for one year and a fine of Rs. 1,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months u/s 201/34 I.P.C.

3. Smt. Pachho 201/34 I.P.C. Devi Rigorous imprisonment for one

4. Smt. Raksha Devi year and a fine of Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for a period of six months u/s 201/34 I.P.C. -----

2. Briefly stated, the case of the prosecution is that on 26.6.1998 at 4.20 p.m., a telephonic information was received from Sanjay Kumar (PW 5) at Police Station Dehra to the effect that Suman (since deceased) wife of accused Budhi Singh had died because of the collapsing of the wall of their house in village Jambal, Police Station Dehra District Kangra but he had not visited the spot, therefore, action be taken in the matter. The information was recorded at the aforesaid Police Station vide D.D. Report Ex. PW-11/A. Thereafter, Nathu Ram, Officer-in-charge of the Police Station (PW-12) along with a few other police officials, visited the place of occurrence. On inspection of the spot, PW-12 found that dead body of Suman was kept in a room of the house and injury on her fore-head was noticed. It was also observed by him that the wall appeared to have been demolished and had not collapsed. Therefore, he prepared Inquest Reports Ex. PW-1/B and Ex. PW-1/C and took photographs of the dead body and the wall Exts. PW-3/A-1 to PW-3/A-5 and sent the dead body for post-mortem examination. The post-mortem examination of the dead body was conducted by Dr. D.P. Swami (PW-1) and Dr. Era Vermani in Zonal Hospital, Dharamshala. At the time of post-mortem examination, the following ante-mortem injuries were noticed on the dead body of the deceased:

Ante-mortem injuries:

1. Bruises 2 in number on each side of the forehead on prominent parts. Reddish in colour each 2" x 2" size, almost rounded in shape. No tailing was present.
2. Grazed abrasions 2 in number each on the mid front part of the thigh 5" x 1 1/2" each reddish tailing above downwards.

Cranium and Spinal Cord:

Haematoma two in number on each side of forehead in frontal area dark reddish in colour. Each 1" x 1" size. No associated fracture of the skull was present. Brain and membranes congested.

The post-mortem report issued by them is Ex. PW-1/A. As per the provisional opinion given in the report, the cause of death of Suman was asphyxia due to combined effect of mechanical suffocation and asphyxia. The viscera of the

deceased was preserved for chemical analysis and the final opinion was also to be given after receipt of the report about the chemical analysis of the viscera.

3. After receipt of the report Ex. PX from the Assistant Director, State Forensic Science Laboratory, Junga, according to which no poison or alcohol was found in the viscera, the final opinion about the cause of death is that the deceased died of combined effect of mechanical asphyxia and suffocation due to ante-mortem pressure and foreign bodies on the chest (respiratory passage), respectively, and the final opinion so given is Ex. PW-1/E.

4. In the meanwhile, on 28.6.1998, Gurbax Singh, brother of Suman (PW-5) lodged a report at the Police Station to the effect that the deceased was married to accused Budhi Singh on 6.12.1977. About two months before the lodging of the FIR, the deceased had gone to his house and informed him that the accused persons used to harass and beat her. On receipt of the information about the death of the deceased, he had visited her matrimonial house. Thereafter he visited the Police Station and then the hospital. After the postmortem examination of the dead body, he went to his house. There, he was informed by Anjana, his other sister, that accused Budhi Singh used to beat the deceased while under the influence of liquor. Therefore, he formed an opinion that his sister had been done to death by the accused and with a view to conceal the commission of the offence, they have deliberately demolished the wall. On the basis of this report, FIR Ex. PW-5/A u/s 302/34 IPC was recorded at the Police Station.

5. During investigation, search of the house of the accused was conducted. One tube containing four tablets of aluminium phosphate 56% (F) Quick Phas were found in a orum which were taken in possession vide Memo. Ex. PW-8/A. One lady suit, including Dupatta Exts. P-5 to P-8 were also found inside the house, which were taken in possession alongwith soil Ex. P-9 vide memo. Ex. PW-5/B. A Jhabbal, Gianti, Fawra (Kassi) Exts. P-1 to P-4 were also taken in possession from a place inside the wall vide Memo. Ex. PW-5/C. The accused made a disclosure statement Ex. PW-10/A about a stick. Pursuant to this statement, a stick Ex. P-10 was recovered vide memo. Ex. PW--8/A. On completion of investigation, the Officer-in-Charge, Police Station, Dehra submitted a charge sheet against the accused against whom, the learned trial Judge framed a charge under Sections 498A, 302/34 and 201/34 IPC, to which they pleaded not guilty.

6. To prove the charge against the accused, the prosecution examined 12 witnesses.

7. The statements of the accused u/s 313 Code of Criminal Procedure were recorded, wherein they have denied the prosecution case as a whole and claimed to be innocent. They have further stated that in the month of June, the sowing work of paddy and maize crops was in progress, therefore, they used to go to the fields early in the morning at about 7.00 a.m. On 26.6.1998 when the accused were working in the fields, they were informed by some children about

the falling of a wall of their kitchen and they immediately rushed home and then came to know about the coming of the deceased under the debris of the fallen wall. The debris was then removed and by that time Suman had died. It is further claimed that their house was old and made of mud bricks. The water of Swan Khud had entered into the house, whereby it had been rendered dilapidated. The information about the death of Suman was immediately given to her relations on parental side. However, a false case has been planted against them.

8. The accused led evidence and examined Sant Ram (DW-1) to prove that their house was in a dilapidated condition because of the water of the nearby khud having rushed into it a few years before.

9. The learned trial Judge finally convicted and sentenced the accused persons as aforesaid. Hence the present appeal.

10. We have heard the learned Counsel for the Appellants and the learned Additional Advocate General on behalf of the State and have also gone through the records.

11. It may be pointed out at the very outset that the acquittal of accused Ram Saran, Pachho Devi and Raksha Devi of the heads of charge under Sections 498A and 302 read with Section 34 IPC as recorded by the trial Court has not been assailed by the State and as such has become final. Therefore, one of the question which arises for determination is whether in view of the said acquittal of the said accused, conviction of and sentence awarded to accused Budhi Singh u/s 302 IPC is sustainable or not in view of the fact that one of the head of charge against all the accused persons is u/s 302 read with Section 34 of the IPC and no charge in the alternative was framed against accused Budhi Singh u/s 302 IPC.

12. In case Prabhu Babaji Navle Vs. State of Bombay, while dealing with a similar question, the Apex Court held as under:

That at once raises the conundrum that arises in this class of case. The Appellant was not charged for having committed the murder himself, nor does the evidence indicate that he was charged for having shared the common intention of four named persons and for having participated in the crime. If these four persons are all acquitted, the element of sharing a common intention with them disappears; and unless it can be proved that he shared a common intention with the actual murderer or murderers, he cannot be convicted with the aid of Section 34 of course he could have been charged in the alternative for having shared a common intention with another or others unknown. But even then, the common intention would have to be proved either by direct evidence or by legitimate inference. It is impossible to reach such a conclusion on the evidence in this case once the co-accused are eliminated because the whole gravamen of the charge and of the evidence is that the Appellant shared the common intention with those other four and not with others who are unknown.

13. The ratio in cases Krishna Govind Patil Vs. State of Maharashtra, ; Baul and Another Vs. State of U.P., ; Sukhram Vs. State of M.P., and Subran alias Subramanian and Others Vs. State of Kerala, is also to the same effect.

14. In view of the above settled position in law accused Budhi Singh could not have been convicted u/s 302 IPC in view of the acquittal of other co-accused u/s 302 read with Section 34 of the Indian Penal Code. Therefore, conviction and sentence awarded to accused Budhi Singh u/s 302 IPC is unwarranted and unsustainable.

15. The trial Court vide para 24 of the impugned judgment has observed as follows:

24. PW-5 Gurbax Singh and PW-6 Parkash Chand, brothers of the deceased have no doubt alleged that all the four accused used to torture their sister physically as they did not like her coming to her parents house and also on account of their demand for dowry, but there does not seem to be any truth in it. First of all it is observed that they did not lodge the FIR with the police making these allegations till 4 p.m. on 28.4.1998. No plausible reason for this extra-ordinary delay in giving these reasons to the police has been explained especially when they had stayed in the police station during the early hours of 26.6.1998. Moreover, they were with the police during the post-mortem examination at Dharamshala also. Otherwise too, in the FIR Ex. PW5/A, Gurbax Singh never made the allegation of any dowry demand, such an allegation came for the first time when he entered the witness box only. Lately it is felt that in such like cases it is a common practice to involve all the members of the family of the in-laws of the deceased. Otherwise also, there is no independent evidence to the effect that all the accused persons used to subject Suman to cruelty for her insistence to come to her parents house or on account of dowry. No such complaint was made by the brothers to anybody prior to her death.

16. Thus, the above observations apparently out at the root of the prosecution case regarding cruelty to the deceased by the accused persons.

17. The trial Court proceeded to convict accused Budhi Singh u/s 498A IPC on the premises (1) that as per PW-1 injuries were found on the person of the deceased, (ii) that accused Raksha Devi had told Prakash Chand (PW-6) that on the night of 25.6.1998 the deceased was beaten up by accused Budhi Singh, and (iii) that Anjana (PW-7) had stated that the deceased was beaten by accused Budhi Singh after consuming liquor in her presence when she had gone to the matrimonial house of the deceased after about 4 or 5 months of her marriage.

18. The medical opinion whatsoever will have relevance only to the cause of death of the deceased and has no direct bearing on the allegations that the accused had been treating the deceased with cruelty even prior to the date of occurrence.

19. Statements of PW-5 and PW-6 on this count are highly unreliable. They are

brothers of the deceased. They have earlier never complained to anyone that the deceased was treated with cruelty by her in-laws or husband. Even after the death of the deceased when they were present at the place of occurrence, at the police station and thereafter at cremation they did not make any allegation of cruelty against the accused persons. It was on the third day of occurrence that they made vague allegations of cruelty. Evidently, in the given circumstances their statements are just an after thought and a cooked up version, otherwise they could have disclosed about the alleged cruelty to the police when they met them for the first time on 27.6.1998. As already stated above the trial Court itself has disbelieved these general allegations of cruelty.

20. Statement of PW-7 is also equally unreliable. She has stated that after 4/5 months of the marriage of her sister Suman (deceased) she had gone to her house and stayed there for 15/16 days. During those days accused Budhi Singh used to beat the deceased daily after consuming liquor and once he turned her naked and then gave fist blows. It is unnatural that in her presence accused would have acted in the alleged manner. It is also unnatural that having seen that her sister was so beaten and humiliated, PW-7 did not disclose it to anyone. She has admitted that her statement was recorded by police at the police station on 29.6.1998 and her signatures were obtained thereon. Admittedly her statement was not recorded u/s 154 Code of Criminal Procedure, hence u/s 161 Code of Criminal Procedure Getting such a statement signed from her is not only contrary to law, but it can be inferred therefrom that the investigating officer had collected evidence in the case in a manner which would have binding effect on the discretion of the witness to make a voluntary statement.

21. The admission of PW-7 that her signatures were obtained on her statement does not seem to be mistakenly made. The Investigating Officer appears to have adopted such a course admittedly in the case of other witness, namely, Sanjay Kumar (PW-9). It is evident from the observations made by the trial Judge during the course of statement of PW-9 which reads : "at this stage learned P.P. has referred to a statement said to have been made by this witness on 26.6.1998 which bear his signature. It has been brought out by him out of his brief." The witness was thereafter confronted with the said statement i.e. Ex. PW-9/A and the witness admitted his signatures thereon. This statement is also not one u/s 154 Code of Criminal Procedure The Investigating Officer thus appears to have obtained the signatures of PW-7 on a statement which could be recorded u/s 161 Code of Criminal Procedure only.

22. Section 162(1) of Code of Criminal Procedure reads as follows:

162. Statements to police not to be signed: Use of statements in evidence.-(1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of

any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

23. The above provision provides that a statement made by a person to a police officer during the course of investigation shall not be signed by the maker nor shall such a statement be used for any purpose whatsoever, save and except the purpose of contradicting the maker as provided u/s 145 of the Evidence Act. Evidently, these provisions are based on the policy that the witnesses should be free to make statements at the trial which they may wish to make in favour of the accused unhampered by anything which they might have been made to make to the police officer. The practice of obtaining signatures of witnesses on a statement made to the police during the investigation is not only contrary to the provisions of law but is also pre-judicial to the interest of the accused.

24. In case *Narpal Singh v. State of Haryana* AIR 1977 SC 1066, Hon"ble Supreme Court has held as under:

16.

In the first place the practice of getting the statements of witnesses signed has been deprecated by this Court and in fact expressly prohibited by Section 162 of the Code of Criminal Procedure. Violation of this provision may sometime diminish the value of the testimony of the witnesses when they come to the court....

25. Therefore, once it is found that the signatures of a witness were obtained by the Investigating Officer on a statement which was recorded u/s 161 Code of Criminal Procedure the testimony of such witness though may not be rendered inadmissible, but the Court will have to be more cautious in scrutinising and appreciating the statement of such witness because he may not feel absolutely free to make statement in view of his signatures having already been obtained on his statement u/s 161 Code of Criminal Procedure

26. In case *State of U.P. Vs. M.K. Anthony*, the Apex Court held as follows:

9.

Assuming that Nair's admission that his signature was obtained on the statement recorded by the investigating officer on March 1, 1973, is correct, it does not render his evidence inadmissible. It merely puts the Court on caution and may necessitate indepth scrutiny of the evidence. But the evidence on this

account cannot be rejected outright. Section 162 of the Code of Criminal Procedure does not provide that evidence of a witness given in the Court becomes inadmissible if it is found that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of the investigating officer, such is not the effect of contravention of Section 162 Code of Criminal Procedure.

27. In view of the above settled position, when statement of PW-7 is read with the fact that she did not disclose the alleged acts of cruelty by accused Budhi Singh to anyone for an exceptionally long time, her statement is rendered highly unreliable and worth no credence. The statements of other witnesses qua general allegations against all the accused had already been disbelieved by the trial Court and rightly so.

28. Thus, there is no cogent and reliable evidence on the record to hold the head of charge u/s 498A IPC is proved against accused Budhi Singh. His conviction and sentence u/s 498A IPC is, therefore, unwarranted and unsustainable.

29. It may now be examined whether accused Budhi Singh has committed any offence other than 302 read with Section 34 IPC for which he may be convicted and whether all the accused have rightly been convicted u/s 201 read with Section 34 of IPC.

30. The case of the prosecution is based entirely on circumstantial evidence. In coming to the conclusions that accused Budhi Singh caused injuries resulting in the death of the deceased and all the accused have false information about the cause leading to death of the deceased intentionally within the meaning of Section 201 IPC in furtherance of common intention, the trial Judge has relied on the following circumstances:

(i) that the accused persons gave conflicting and contradictory false information about the cause of death of the deceased;

(ii) that the medical evidence suggests that the deceased was subjected to torture by her husband during the second half of the night intervening 25th/26th of June, 1998;

(iii) that the accused did not give the information about the death of the deceased to her parental relatives directly;

(iv) that accused themselves demolished the wall of their house to cause it to be believed that the deceased died because of falling of the wall on her; and

(v) that as per the disclosure made by accused Raksha Devi, the deceased was beaten by Budhi Singh as a consequence whereof she died.

31. Regarding appreciation of circumstantial evidence by now it is well established that where the inference of guilt of an accused person is to be drawn from circumstantial evidence, those circumstances must, in the first place, be cogently established. Further, these circumstances must, be of a definite

tendency pointing towards the guilt of the accused, and in their totality must unerringly lead to the conclusions that within all human probability, the offence was committed by the accused and none else.

32. The Supreme Court in *Jaharlal Das Vs. State of Orissa*, while dealing with a case of rape and murder based on circumstantial evidence has held:

It is well settled that the circumstantial evidence in order to sustain conviction must satisfy three conditions:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances, should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

33. The Supreme Court further sounded a word of caution that in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion howsoever strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of innocence of the accused.

34. In view of the above principles we now proceed to examine each of the aforesaid circumstances relied upon by the prosecution to prove the charge against the accused and made basis to convict the accused as aforesaid by the learned trial Judge.

Circumstance Nos. (i) and (iv):

35. Since both these circumstances are inter connected and can conveniently be examined together, therefore, are taken up together for consideration.

36. The version of the prosecution in this regard is that the accused persons had given two false causes of death of the deceased viz. (i) that she died because of the fall of collapsed wall of their house on her and (ii) that she died of consumption of poison.

37. It was contended for the accused that their constant version had been that the deceased died because of collapsing of the wall of their house and a correct appraisal of evidence on record also goes to show that the deceased had met with an "accidental death and the findings of the trial court to the contrary are

based on surmises and conjecture and are not sustainable.

38. The initial information received and recorded by the police about the death of the deceased is report Ext. PW-11/A. As, per the contents of this report the police were informed telephonically by Sanjay Kumar (PW-9) Pradhan of the Gram Panchayat concerned that Suman (the deceased) had died because the wall of the house had fallen on her. Thus, the initial information recorded by the police was that the deceased died because of the fall of a wall of the house of the accused.

39. On visiting the place of occurrence and inspection thereof the Investigating Officer (PW-12) formed the opinion that the wall had not collapsed but had been demolished by the accused persons and that fake information about the occurrence had been given. This opinion is contained in the inquest report Ext. PW-1/B.

40. Be it stated here that at the time of the preparation of report Ext. PW-1/B or prior thereto no witness was examined by the Investigating Officer nor anyone is stated to have informed him that the wall was demolished by the accused. Therefore, the opinion that "the accused had demolished the wall" as given in the report Ext. PW-1/B is without any basis. Mere inspection of a collapsed wall could not lead even to a prima facie conclusion that the wall was demolished by the accused.

41. The correctness of the aforesaid opinion of the Investigating Officer (PW-12) is sought to be explained on the grounds that at the time of inspection of the spot the Investigating Officer had noticed that all the accused were present on the spot and they were some times pleading that the deceased had consumed poison and some times that she had come under the wall while applying mud over it. However, there were no traces of any vomit or application of mud on the wall. On the contrary from the impression of Jabhal etc. on the internal side of the wall it appeared that the wall was demolished with the help of Jabhal etc. and such Jabhal etc. were lying near the fallen material of the wall. It is so stated by the Investigating Officer (PW-12) in his statement. However, in the inquest report where the history of the case has been given none of these facts have been stated. There is no reference that the accused had given two versions as aforesaid about the cause of the death of the deceased or that any marks on the wall were noticed which could prima facie show that the wall had been deliberately demolished nor there is any reference to the Jabhal etc. having been found near the demolished wall.

42. There is no dispute that inquest report Ext. PW-1/B was prepared around 4.20 p.m. on 26.6.1998 and at the same time the place of occurrence and the dead body were got photographed from Surender Kumar (PW-3). At the same time report Ext. PW-1/C was also prepared. There is no mention in the report Ext. PW-1/C that any of the accused persons had given the version that the deceased had consumed poison. On the contrary, as per the contents of report

Ext. PW-1/C it is observed by the Investigating Officer himself without any evidence or material before him that it was "quite possible that the deceased may have consumed some poisonous substance." Had the information been given by the accused person about the deceased having consumed poisonous substance the Investigating Officer could have and should have stated so in the report whereas as per the contents of the report he has in his own wisdom thought it that it could possibly be a case of consumption of poison by the deceased. Similarly, even in this report there is no mention that the demolished wall or its remains had any marks therein indicative of its demolition deliberately. Photographs of such marks have not been taken nor the Jabhal etc. were taken in possession at that time.

43. At the time of preparation of the inquest report and the inspection of the spot, Surinder Kumar (PW-3), Duni Chand (PW-8) and Sanjay Kumar (PW-9) were present. None of these witnesses had stated that at the time of inspection of the spot any such marks were found on the wall from which it could be inferred that it had been demolished. None of these witnesses had stated that Jabhal etc. were found lying near the debries of the wall. Though in the photograph Ext. PW-3/A one "Kahi" can be seen lying near the debries but there is no "Jabhal" or any other impliment by which a wall can be broken. However even this photograph showing the "kahi" near the demolished wall is also of no help to the prosecution in view of the statement of the photographer (PW-3) who has stated that it was at the instance of the police that some one had kept this "kahi" etc. near the broken wall and the photographs were taken thereafter. Be it stated that this witness who is a photographer is not shown to be interested either in the prosecution or in the accused in any manner nor his statement about the planting of the kahi etc. near the debries of the broken wall is challenged by the prosecution in any manner. Thus, it is crystal clear that the version regarding jabhal, kahi etc. lying near the broken wall is a piece of concoction and kahi had been planted there at the instance of the police before taking of the photographs. This fact not only belies the prosecution version regarding presence of the instruments capable of breaking the wall near the debries but also goes to show that the conduct of the Investigating Officer/Police in conducting the investigation was not fair and the Investigating Officer right from the beginning had in his mind to make out a case against the accused even if he has to concoct evidence and plant incriminating articles so as to involve the accused persons.

44. As per the prosecution evidence the spot was inspected by PW-12 when he visited the place on 26.6.1998. However, the site plan Ext. PW-12/A had been prepared two days thereafter i.e. on 28.6.1998. Evidently, minute details of the spot cannot be correctly given in such a site plan. In any case, even in this site plan there is no reference that such marks were noticed on the demolished wall or its remains which could suggest that it was deliberately demolished and had not collapsed because of natural courses. Further, in this site plan there is no reference that any jabhal or kahi were lying on the spot. It refers to a Kudali,

gainti etc. but none of such impliments are visible in the photographs. During investigation the wall was got inspected and measured from Parkash Chand PW-2. He has also not stated that any such signs or marks were noticed by him which could suggest that the wall had been deliberately demolished. On the contrary what he states is that he measured the wall and the front portion thereof had collapsed.

45. The jabhal etc. allegedly found near the debries of the wall at the time of inspection were taken in possession by the police vide memo Ext. PW-5/C on 28th of June, 1998 i.e. after two days of the spot inspection and not at the time of spot inspection. It appears improbable that these articles remained lying on the spot for two days without anyone trying to remove them from there.

46. It is for the first time in the FIR got registered on the third day of the occurrence i.e. on 28.6.1998 that PW-5 Gurbax Singh has stated that he was informed by the husband of the deceased that she had consumed the tablet which is being put in the wheat i.e. a poisonous substance. However, while appearing as a witness he has not stated so but has come up with a contradictory version that it was accused Pancho Devi who informed them that Suman had died due to the fall of wall on her and had also further stated that she had died due to consumption of poison. However, this is not his version in the FIR nor there appears to be any reason for accused Pancho Devi to simultaneously disclose two causes of death of the deceased. Had the accused demolished the wall just to make others believe that decease had died because the wall collapsed over her, in the ordinary course of human nature it is improbable that they or anyone of them would come up with a version that the deceased had consumed poison. It is admitted case of PW-5 Gurbax Singh that he alongwith PW-6, Parkash Chand, one Tarsem and two or three other persons went together to the matrimonial house of the deceased and Pancho Devi made the aforesaid disclosure to them. However, on this score he is contradicted by none other than his brother Parkash Chand (PW-6) who had nowhere stated that Pancho Devi had disclosed that the deceased died because of consumption of poison. On the contrary his version is that it was accused Raksha Devi who told him after the cremation that Suman consumed poison and had died of her own after coming under the wall. PW-8 Duni Chand had stated that accused Ram Saran had told him that his daughter-in-law has consumed poison and had died. However, this witness is admittedly making this statement for the first time in the Court and has not stated so in his statement u/s 161 Code of Criminal Procedure Ext. PW-12/E with which he was confronted and he has not explained as to why he did not state this fact at the time of making of statement Ext. PW-12/E. Thus, these statements regarding the accused having put up contradictory versions about the cause of death of the deceased are utterly contradictory of each other and therefore highly unreliable.

47. There is no direct evidence that the wall was demolished by the accused persons. The instruments by which they are alleged to have demolished the wall

have been found planted and there is no trustworthy and reliable evidence on the record to establish that when the police party reached on the spot for the first time any such marks were found on the debries of the wall or its remains from which it could be inferred that it had been demolished by the accused deliberately.

48. The consistent defence of the accused is that Suman died due to fall of the wall and at the relevant time they had gone to their fields. On 26.6.1998 they were intimated of the fall of the wall of their kitchen by some children and on this they rushed home and come to know about the deceased coming under the debries of the fallen wall. They removed the debries but she had died by that time. It has been further explained by them that their house is old and made of mud bricks. The water of Swan Khad had entered into their house rendering the house dilapidated and that they have informed the relatives of the deceased on the parental side that Suman died because of the collapsing of the wall.

49. The accused persons have examined DW-1 Sant Ram regarding condition of their house. He has stated that the house of the accused persons is situate on the bank of a khad and their house is old and its walls have developed cracks. About 8 or 9 years before the house was flooded with water of the khad which had rendered it into a dilapidated condition.

50. PW-2 Parkash Chand who visited the house in question to take its measurement has also admitted that the house in question is an old house and is situate on the bank of the river (khad). Even Duni Chand (PW-8) who had made an improved and exaggerated statement as already seen hereinabove against the accused, has admitted that the house of accused Ram Saran is about 25 years old and about 5-7 years ago the water of Swan river had entered into his house. The walls of the house are made up of Kacha brick's and at that time the water had caused damage to the house and its walls. PW-9 Sanjay Kumar states that rain water enters the house of the accused almost every year thereby causing damage to it. Even the Investigating Officer has admitted that the house of the accused is on the bank of Swan Khad.

51. As seen here-in-above, there is no cogent, reliable and trustworthy evidence to support the prosecution version that the accused gave conflicting and contradictory false information about the cause of death of the deceased and themselves demolished the wall to cause it to be believed that the deceased died because of the falling of the wall on her. On the contrary, the Investigating Officer has tried to concoct evidence and the material witnesses have made utterly contradictory statements in this regard. We have thus no hesitation in coming to the conclusion that these circumstances are not cogently and firmly established.

Circumstance No. (ii):

52. Be it stated at the very outset that there is nothing in the medical evidence which may lead one to the conclusion that the deceased was subjected to torture

by her husband during the second half of the night intervening 25th/26th of June, 1998. The findings of the trial Court to this effect are, therefore, based simply on conjectures and surmises and not on legitimate inferences.

53. In fact, the medical opinion vide contents of MLC and the statement of PW-1 is that Smt. Suman died of asphyxia due to combined effect of mechanical asphyxia and suffocation due to ante-mortem pressure and foreign bodies on/in chest (respiratory passage) respectively. It is admitted by PW-1 in his cross examination that there is a possibility of receiving the injuries suffered by the deceased in this case by the debries of the falling of a wall. He has further admitted that injury No. 1 and injury No. 2 on the skull as found on the person of the deceased could be caused by a fall which can be simultaneous under the debries of the falling wall. He has further admitted that if huge amount of debries falls upon a person covering the whole of the chest and causing create pressure the mechanical asphyxia is possible. In case the debries fall on the face that can also cause suffocation and both these can be together. It has further been admitted by PW-1 that mechanical asphyxia cannot occur without application of pressure on the chest and if a person is pressed upon the chest there may be injuries on the feet and arms of a victim if he make attempt to save himself. If the arms of such person are caught held there may be marks of pressure on the arms which may have some signs. However, no such injuries or marks were found on the dead body of the deceased. Thus, according to the medical evidence no such injuries or marks were found on the dead body of the deceased from which it may be inferred that mechanical asphyxia or suffocation was caused to her by a person or persons. Mechanical asphyxia and suffocation were capable of being caused to the deceased because of the falling of the wall. Thus, the medical evidence does not support the version that it was accused Budhi Singh who applied pressure on the chest of the deceased or who caused injuries to her, in the latter half of the relevant night. While giving the description of the dead body PW-1 has stated that froth was present on the nose, dust particulars were present in the nostrils, mouth and front of forehead of the deceased and foreign bodies were detected in her respiratory passage. These are indicative of the fact that the debries had fallen on the deceased and dust etc. caused by the falling of the wall was inhaled by her. Thus, in view of the medical evidence the more probable cause of death of the deceased is falling of the debries of the collapsed wall on her and her inhaling of the dust thereby produced. This circumstance, therefore, has wrongly been relied upon by the learned Sessions Judge to conclude that it was the accused who beat up the deceased in the latter half of the night intervening 25th and 26th of June, 1998 thereby causing her death.

Circumstance No. (iii):

54. To prove this circumstances, the prosecution has examined PW-5 Gurbax Singh who has stated that son of his taya, namely, Raghubir Singh had gone to his house at about 8 or 9 p.m. and told that Suman Devi had sustained some

injuries due to fall of a wall and accused Ram Saran had gone to the house of said Raghubir Singh to convey this information to them. Said Raghubir Singh then went to their house and informed wife of PW-5 who was alone in the house at that time. She informed PW-5 when he returned home. This part of the statement of the witness is not corroborated by any other witness and whatever this witness states is not within his personal knowledge. Raghubir Singh to whom the information is alleged to have been initially given or Sureshtha Devi wife of this witness who conveyed the information to this witness have not been examined to state as to how she received the information about the deceased having come under the wall of the house. May be that Sureshtha Devi being all alone in the house accused Ram Saran had thought it proper not to convey the information directly to her though the case of the accused is that after the incident accused Ram Saran immediately rushed to the parental house of the deceased to inform and accordingly gave the information there. In any case, this is not a circumstance which can be relied upon to hold the accused guilty of the offences for which they have been convicted and sentenced.

Circumstance No. (v):

55. It is no-where in the FIR or in the material collected by the Investigating Agency that accused Raksha Devi had disclosed that the deceased was beaten by Budhi Singh and as a consequence thereof she died. To prove the circumstance, prosecution relies upon the statement of PW-6 Parkash Chand brother of the deceased who had stated that Raksha Devi had told him that on the night of 25.6.1998 Suman was beaten by Budhi Chand accused due to which she kept on lying till next morning when she took water and then died. This version has also been given by this witness for the first time when he was cross-examined for the prosecution. In his examination-in-chief he has stated that Raksha Devi daughter of his paternal uncle had told him that Suman consumed poison and died of her own after coming under the wall and that nothing else was told by Raksha Devi. He was, thereafter, cross-examined for the prosecution and has made the incriminating statement in his cross-examination. However, when his statement u/s 161 Code of Criminal Procedure (Ext. PW-12/C) was recorded on 28.6.1998 he did not make any such statement to the police. He was confronted with the said statement and he has not offered any explanation as to why he did not state about the alleged disclosure by Raksha Devi to the police while making said statement u/s 161 Code of Criminal Procedure Evidently on this count he has made not only a self-contradictory statement but having stated so for the first time at the trial his statement cannot be relied upon as it appears to be an after thought. Thus, this circumstance is also not cogently and firmly established.

56. In view of the above discussion and the reasons stated therein, in fact there is no cogent and reliable evidence on record to prove any of the heads of charge framed against the accused persons or commission of an offence u/s 302 IPC or any cognate offence by accused Budhi Singh. The conclusions arrived at by the learned trial Judge are mainly based on conjectures and surmises and the

inferences drawn by him are unsupportable by anything on the record. Therefore, the impugned conviction of and sentences awarded to the accused persons cannot be sustained.

57. As a result, this appeal is allowed and the impugned conviction of and sentences awarded to the accused-Appellants are set-aside and they are acquitted of the heads of charges under which they have been convicted by the trial Court. The bail bonds furnished by the accused-Appellants 2 to 4, namely, Ram Saran, Pachho Devi and Raksha Devi are discharged. Accused Budhi Singh who is in jail undergoing the sentence awarded to him by the Sessions Judge is ordered to be set at liberty forthwith.