

(2000) 07 MAD CK 0009
In the Madras High Court
Case No : Criminal App. No. 830 of 1989

Chinnamurugan

APPELLANT

Vs

State by Inspector of Police, Nilakottai

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2000) 2 LW(Cri) 898

Hon'ble Judges : S. Jugadeesan, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : John Sathyan, for Mr. K. Selvarangan, for the Appellant; N.R. Elango, Government Advocate, (Criminal Side), for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Chinnaniurugan, the appellant herein has Filed this appeal challenging the conviction u/s 302 of the Indian Penal

Code and the sentence of life imprisonment imposed upon him in Sessions Case No.25 of 1989 on the file of Sessions Judge. Dindigur District.

2. Though the appellant, who is the first accused in the above said sessions case was tried along with three others in respect of other offences

punishable under Sections 302 read with 109 & 201 of the Indian Penal Code and under Sections 3 and 4 of the Down Prohibition Act. the

appellant (AI) alone was convicted for the offence punishable wider Section 302 of the Indian Penal Code and the others were acquitted of the

charges framed against them

3. The short facts leading to the conviction of the appellant/first accused are as follows :-

The deceased Chandra, the daughter of P.W.1 Karuppa Pillai was given in marriage with the appellant/first accused in March, 1988. The

appellant/first accused is the son of Kamuthayee, the fourth accused in the said Sessions Case. P.W.1 Karuppa Pillai is the brother of the fourth

accused Kamuthayee. Ganesan, the second accused in the said Sessions Case is the elder brother of the appellant/first accused. Raju Pillai. the

third accused and Kamuthayee, the fourth accused, are the parents of the appellants/first accused and the second accused P.W 4 Kamppiah is the

brother-in-law of P W. 1.

4. The appellant will hereinafter be referred as the ""first accused"" and the other acquitted accused will be referred to in the manner in which they

were referred to before the Sessions Court.

5. P.W.1 was residing in Silukkuvarpatti. At the time of marriage of the deceased Chandra with the first accused. P.W.1, the father of the

deceased gave half a sovereign ear-stead: quarter sovereign nose stead and half a sovereign ring for the first accused and he also gave house hold

articles worth about Rs.3.000/-. On behalf of the bride groom, it was demanded that P.W. 1 must give three sovereigns of gold chain. P.W.1

pacified the bridegroom party stating that he was not able to arrange money for the purchase of three sovereigns jewels and assured that he would

get a chain some time later. On such assurance, the accused party agreed for the marriage. Accordingly, marriage was conducted After the

marriage, both, the first accused and the deceased Chandra were residing at Kurumbapatti village Within a few months, the deceased Chandra

came to the house of P.W. 1 and complained that she was being tortured by the accused persons, demanding three sovereigns of gold chain. P.W

1 pacified the deceased Chandra and assured that he would arrange for the purchase of a gold chain within a short time and sent her back to her

matrimonial house.

6. In the month of Vaikasi. there used to be ""Vaikasi festival"" in the temple of Sillukkuvarpatti village. P.W.1 went to Kurumbapatti and brought,

both, his daughter and son-in-law, the deceased and the first accused to his village for offering their prayers in the temple in the village. After the

festival was over the first accused alone left the house of P.W.1 stating that the deceased would stay in her father's house and would return to

Kurumbapatti only with the gold chain. Again for celebrating ""Adi"" P.W.1 Karuppa Pillai and P.W.4 Karruppiah went to Kurumbapatti and requested the first accused to come to his village. At that time also, the first accused demanded the gold chain. P.W.1 cajoled him stating that he would arrange for the same at the earliest. As requested, the first accused came to P. W I's village and stayed for some days and went back to Kurumbapatti without taking the deceased with him.

7. At the end of "Adi" the first accused and his elder brother, the second accused went to the house of P.W. 1 and shouted at them asking whether they would give the first accused gold chain of three sovereigns or else, they would arrange for the second marriage of the first accused with some one, who would give ten sovereigns of gold, after customary divorce. Thereafter, both the first and the second accused went to the tea-shop of P.W.3. Thangapandy in the same village and took tea. When they were drinking tea, they conversed with each other stating that if P.W. 1 couldn't give three sovereigns, they would arrange to take the deceased to their village and throw her into a well after murdering her and thereafter, the first accused could marry somebody else, who could give ten sovereigns of gold.

8. On hearing this conversation, P.W.3 Thangapandi. being the close relative of P.W. 1 objected to that plan, which resulted in a wordy quarrel between them. The others present in the tea shop also shouted at accused 1 and 2 and condemned them for such a plan. Thereafter, both the accused left the place. P.W.3 Thangapandi went to the house of P.W.1 and informed him about the incident. P.W.1, in turn, stated that the first accused, being his sister's son. would not resort to such an action and stated that he would make arrangement to get the three sovereigns and if that is given all the problems would be solved.

9. On 23.08.1988 the first accused came in the morning and expressed his willingness to P.W.1 to take the deceased Chandra with him. However, P.W.1 asked him to bring his parents and only if they come, he would send the deceased to his house. Accordingly, on the same day evening, the fourth accused, the sister of P.W. 1 came and requested P.W. 1 to send his daughter. Therefore, P.W. 1 sent his daughter with them on the same day.

10. On 25.08.1988 at about 07.00 p.m. P.W.2 Rajendran saw the first and second accused carrying Chandra on their shoulders, while the third

accused was holding the umbrella, since it was raining and the fourth accused was having a bucket with rope.

11. On the same day one Thanislas, P.W.5 came to P.W.1 and told him that the second accused Ganesan had asked him to inform P.W. 1 that his

daughter Chandra was missing. Immediately, P.W.1 arranged for a taxi and went to Kurumbapatti village along with his wife. When the fourth

accused was questioned, she told P.W.1, that the deceased left the house at 05.00 p.m. on that day and did not turn up and the bucket and the

rope were also missing. P.W. 1 and the others went in the same taxi to several places in search of his daughter. Finding no trace, on 26.08.1988

P.W.1 returned Kurumbapatti at 06.00 a.m. At that time he saw a crowd near a well situate at the north of the village. When he went near the

well, he was informed that his daughter was floating in the said well. After seeing the dead body floating in the well. P.W.1 went to Nilakkottai

police station and gave a complaint to the police constable P.W. 12.

12. P.W. 12. the constable, on receipt of the complaint, registered a case in crime NO.243/1988 u/s 174 of the Code of Criminal Procedure and

498-A of the Indian Penal Code at 09.00 a.m. on 26.08.1988. The said complaint is Ex.P.1. He prepared the printed first information report

Ex.P.16 and sent the copies to the Inspector of Police and other officials including the Revenue Divisional Officer

13. P.W.14 the Inspector of Police received the first information report at about 10.00 a.m. on that day and went to the scene at 10.30 a.m. and

he prepared observation niahazar Ex.P.8 in the presence of P.W. 10 at 03.00 p.m. The body of the deceased was taken out from the well.

Thereafter, he seized saree, M.O.3 from the body of the deceased under mahazar. Ex.P.9. in the presence of the same witness.

14. At 6.00 p.m. on 26.08.1988. P.W.9 Rajendran Rao, the then Revenue Divisional Officer of Dindigul. received a copy of the first information

report and rushed to the scene and conducted inquest over the dead body of the deceased between 07.00 p.m and 09.00 p.m. in the presence of

panchayatdars. He examined P.W. 1, as well as accused 1,3 and 4 and others. The inquest report is Ex.P.6. Thereafter, the body was sent to the

Government Hospital through P.W.7. a constable along with the requisition. Ex.P.3. P.W.7 handed over the body to the hospital

15. P.W.6 Dr. Sasireka, attached to the Government Hospital. Nilakottai conducted autopsy over the body of the deceased on 27.08.1988 at 10

40 a.m. and found the body bloated and vesicles present all over the body. The following external injuries were also found on the body:

1. An abrasion 1 cm in length over the middle of the upper lid of the right eye.

2. Blood clots seen in left nostril of the nose.

Peeling of the skin present over the chest, abdomen and extremities. Eyelids closed Nose bloated. Mouth opened. Tongue inside. Teeth complete

She issued Ex.P.5. post mortem certificate On receipt of viscera report, she opined in Ex.P 4 certificate that the deceased would appear to have

died of asphyxia due to smothering.

16. P.W. 15, the Deputy Superintendent of Police, Nilakottai. on receipt of the report, came to the spot at about 10.00 p.m. on 26.08.1988 and

examined P.W.1. He drew a rough sketch of the scene of occurrence. Ex.P.25. On the next day. he examined P.Ws.3 and 4. He examined the

doctor on 28.08.1988. Since the opinion of the doctor was that the death of the deceased would appear to have died due to smothering and not

due to drowning, he altered the offence into one u/s 302 of the Indian Penal Code. The express report in respect of the altered crime is Ex.P.24.

17. On 29.08.1988 at 10.00 a.m. P.W. 15 arrested the first accused in Pandiarajapuram bus stand. He gave a confession statement, the

admissible portion of which is marked as Ex.P.7. In furtherance of the said confession statement. P.W. 15 recovered M 0.4 pillow. M.O.5 mat.

M.O.6 lock and key and M.O.7 umbrella, from the house of the first accused, under mahazar. Ex.P.7. He also recovered complaint. Ex.P. 12

written by the first accused, addressed to the Inspector of Police that his wife is missing. He drew a rough sketch of the house of the first accused,

which is marked as Ex.P.26. He also recovered MO 8 series, the rope and bucket under mahazar Ex.P. 13 at 3.15 p.m. on that day from the well

18. On 29.08.1988 the third and the fourth accused were arrested by P.W.14. the Inspector and they were remanded to judicial custody P.W. 15

obtained the specimen signatures of accused I and 2. On 01.09.1988. P.W. 15 sent a requisition Ex P. 17 to the Court requesting to forward the

material objects for chemical analysis P.W. 13. the Court clerk sent the material objects for chemical analysis along with Court's letter Ex.P. 18

P.W. 15 also sent a requisition Ex.P.21 requesting to send the specimen signatures of the accused 1 and 2 to the handwriting expert. The chemical analysis report. Ex.P. 19. and the serological report, Ex.-P.20 and the report of the handwriting expert, Ex.P.23 were received by the Court.

19. On 23.12.1988. the successor of P.W. 15 filed the charge sheet against all the four accused for the offences punishable under Sections 3 and

4 of the Dowry Prohibition Act and u/s 302, 302 read with 109 and 201 of the Indian Penal Code.

20. The trial Court framed charges, against all the four accused under Sections 3 and 4 of the Dowry Prohibition Act, against the first accused u/s

302 of the Indian Penal Code, against the second accused u/s 302 read with 109 of the Indian Penal Code and against the third and fourth

accused u/s 201 of the Indian Penal Code.

21. The prosecution, in the course of trial, examined P.Ws.1 to 15, filed Exs.P. 1 to P.26 and marked M.Os. 1 to 8 to prove its case. The plea of

the defence in the proceedings u/s 313 of the Code of Criminal Procedure is one of denial.

22. The trial Court, on consideration of the entire materials available on record, acquitted the second accused of the charge u/s 302 read with 109

of the Indian Penal Code: the third and fourth accused of the charge u/s 201 of the Indian Penal Code and the first, third and fourth accused of the

charges under Sections 3 and 4 of the Dowry Prohibition Act. However, the first accused was convicted for the offence u/s 302 of the Indian

Penal Code holding that he murdered his wife by smothering and threw the body into the well and for the said conviction he was directed to

undergo life imprisonment. Aggrieved by this conviction and sentence, the appellant/first accused has filed this appeal.

23 Mr. John Sathyan, the learned counsel for the appellant/first accused took us through the entire evidence and contended that the reasoning

given by the trial Court for acquitting the other accused would apply to the first accused also; the evidence of P.Ws.2 and 3, they being the chance

witnesses were correctly disbelieved by the trial Court; the evidence of P.W. 1 has also to be disbelieved since he did not mention about the plan

of accused 1 and 2 to commit the murder of the deceased and that information was conveyed to P.W.1 by P.W.3; the evidence referring to

recovery and delayed final opinion of the doctor would not alone be sufficient to hold the first accused guilty for the offence of murder, especially

when there is no motive and that therefore, the first accused would be entitled to the benefit of doubt.

24. On the other hand, Mr. N.R. Elango, the learned Government Advocate, pointing out the various pieces of circumstantial evidence, would

contend that the chain of circumstances projected by the prosecution against the first accused would be complete, more so, when there is no

explanation from the first accused, who is the husband of the deceased and who was residing with her under the same roof, for her missing.

Moreover, the opinion of the doctor and the recovery of the pillow M.O.4 containing blood stains would be the corroborating circumstances,

which would support the other evidence on record. Therefore, the conclusion of conviction arrived at by the trial Court is correct and valid.

25. At the outset, it shall be mentioned that there is no eyewitnesses in this case and the entire case of the prosecution rests upon the circumstantial

evidence. It is well settled that the circumstantial evidence, in order to sustain a conviction, must satisfy three conditions and they are;

i)The circumstances, from which an inference of guilt is sought to be drawn, must be cogently and fairly established.

ii)The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

iii)The circumstances taken cumulatively should form a complete chain so that there is no escape from the conclusion that in all human probabilities

the murder was committed by the accused and not by any one else. It should also be incapable of explanation of any other hypothesis than that of

the guilt of the accused.

26. In the light of all these three conditions, let us now evaluate the materials on record The various pieces of circumstantial evidence projected by

the prosecution, in this case, are as follows:

(a)The demand of gold chain of three sovereigns in the form of dowry by the appellant from the father of the deceased and the failure to comply

with the said demand by the father of the deceased. P.W. 1:

(b)The deceased was staying along with the first accused in his house and the well in which the dead body was found floating is near the house of the first accused.

(c)The absconding of the first accused from 26.08.1988 till 29.08.1988 on the date when he was arrested, without taking any steps to trace out the missing wife:

(d)Recovery of the blood stained pillow M.O.4. on the confession statement of the first accused and the report of the analyst that the blood was human blood and the recovery of Ex.P.12, the complaint written by the first accused on the date of the occurrence, addressed to the Inspector of Police. Nilakottai. stating that his wife was missing and entertaining a doubt that she might have committed suicide, but was not sent to the police station.

(e)There was no proper explanation by the first accused for the missing of his wife, with whom he was residing at the time of the incident:

(f)The final opinion of the doctor that the deceased would appear to have died due to smothering by pressing the face and neck with a pillow and the body thrown into the well after death.

27. The above listed circumstances are analysed as hereunder:

(a)(i)As regards the demand of a gold chain of three sovereigns by the first accused from the deceased, there is evidence of P.Ws. 1 and 4. P W.

1. the father of the deceased, even in the earliest document viz.. complaint. Ex.P. 1 has mentioned that he gave half a sovereign ring, half a

sovereign ear-stead; quarter sovereign nose-screw and household articles worth Rs.3.000/- at the time of giving his daughter, the deceased in

marriage to the first accused The appellant, when questioned u/s 313 of the Code of Criminal Procedure, had admitted the same. Both, in his

complaint and in his deposition P.W.1 would specifically state that even at the time of marriage, the accused asked for a gold chain of three

sovereigns and that he had assured that he would give him within a few months. Immediately after two months, the deceased, the daughter of

P.W.1 was stated to be tortured by the first accused and his parents for not giving him the chain, as asked for. This was informed to P.W. 1 who

in turn, pacified the first accused stating that he would arrange for the same within a short time.

(ii)When the first accused and the deceased were invited for Vaikasi festival in P.W. 1 's village, both, the first accused and the deceased attended

the festival, but. after the festival was over, on the third day, the first accused alone left to his village, stating that the deceased could come back

only with the gold chain. The marriage took place on 29.03.1988. The fateful occurrence took place on 24.08.1988. In the meantime, the

deceased was sent back to P.W. 1 ;s house to get the gold chain. Even for the Adi festival, the first accused initially did not incline to come and

join his wife in P.W.Ts village. P.Ws. 1-and 4 cajoled the first accused and requested him to come and attend the function in his village and

assured him that he would be given the gold chain in the shortest possible time. Even then, he did not take back the deceased with him.

immediately. Even after her death, during inquest by the Revenue Divisional Officer, as is evident from the inquest report. Ex.P.6. the

panchayatdhars have opined that there was dowry harassment by the first accused and his parents.

(iii)Though there was a charge framed for ""dowry torture against accused 1,3 and 4. it was held by the trial Court that there was no clear evidence

as against third and fourth accused and therefore, they were acquitted. Though the trial Court found that there were materials against the first

accused for the offence of dowry torture, since there was no sanction, he was acquitted of the said charge. Thus, it is clear that the finding of the

trial Court, that the deceased was put to down" torture by demanding gold chain of three sovereigns is on the basis of the materials, viz. Ex.P. 1.

the complaint, the evidence of P.Ws. 1 and 4

(iv)According to the prosecution, since the demand for the gold chain was not met by the father of the deceased, the first accused and his mother,

the fourth accused came to the house of P.W.1 and took the deceased with them to their village, with an intention to kill her and accordingly, she

was murdered and her body was thrown into a well.

(v)In order to explain the conspiracy, the prosecution examined P.W.3, who is the close relative of P. W. 1. He owns a tea-stall at Silukkuvarpatti

village. According to him. one month prior to the date of occurrence, both the first and second accused came to his tea shop and conversed with

each other by stating that in case P.W. 1 could not give the gold chain of three

sovereigns, they would take the deceased with them, kill her and throw her body into a well and thereafter, they would arrange for the second marriage of the first accused with some one, who could give him more dowry.

(v) It is the evidence of P.W.2 that on the date of the occurrence, he saw accused 1 and 2 carrying the deceased on their shoulders near Kurumbapatti village, accompanied by accused 3 and 4 at about the time of occurrence.

This evidence of P.Ws.2 and 3 were disbelieved by the trial Court on the ground that P.W.2 was a chance witness and that the evidence of P.W.3 was artificial.

(vii) We see no reason to reject this finding of the trial Court. We have also some other reasons to disbelieve the evidence of P.Ws.2 and 3 P.W.2

would admit that he did not tell anybody that he saw accused 1 and 2 carrying the deceased, accompanied by accused 3 and 4, till he was

examined by the Inspector of Police on 29.08.1988. According to P.W.3. he informed about the conversation between accused 1 and 2 to P.W.

1. who in turn, told him that the first accused, being his sister's son. would not resort to such a crime. If that is so. then, P.W. 1 must have

mentioned about this in the complaint. Ex.P. 1 and the details given in the deposition of P.W.1, which has been corroborated by P.W.4. and the

opinion of the panchayatdharas.. as recorded by P.W.8 the Revenue Divisional Officer in the inquest report. Ex.P.6. would clearly establish that

there was dowry torture and consequently, the deceased had to leave the house of her husband and stay with her father for sometime and the said

demand was not met at all by P.W.1, her father. This aspect can be considered as the motive for the occurrence.

(b) It is the case of the prosecution that on 23.08.1988 the first accused came to the house of P.W. 1 and asked him to send his wife with him. But.

P.W.1 insisted the first accused to bring his patients and then take his wife with him. Accordingly, in that evening itself, the fourth accused, the

mother of the first accused came to P.W. 1 "'s house and asked him to send his daughter. Therefore. P.W. 1 sent his daughter along with them.

Accused 2 to 4 were residing at Nilakottai at the time of occurrence. The first accused took the deceased to Kurumbapatti and was staying in his

house. The occurrence took place on the next day, i.e. on 24.08.1988 at 11.00 p.m.

(ii) On the next day, i.e. on 25.08.1988 P.W.5 came to P.W.1's house and informed him that he was instructed by the second accused to inform

him that his daughter was missing. Immediately, P.W.1 and his wife went to Kurumbapatti village and enquired about the deceased to the fourth

accused, who informed him that the deceased left the house at 5.00 p.m. on that day and she did not turn up. Thereafter, P.W. 1 and others went

to several places in a taxi, in search of the deceased. Since they could not find her, they returned to Kurumbapatti on 26.08.1988 morning. There,

they came to know that the body of the deceased was floating in the well.

(iii) According to P.W.1, the well was in the Kurumbapatti village. P.W. 14, the Inspector of Police would state that the well is situated one furlong

away from the Kurumbapatti village. This aspect of the evidence has not been challenged by the defence. On the other hand, the missing of the

deceased they conveyed to P.W.1 through P.W.5 at the instance of the second accused was also established, since the address of P.W.1 is in a

chit. Ex.P.2 was written by the second accused himself and was given to P.W.5, which was recovered by the Deputy Superintendent of Police.

P.W. 15 on 29.08.1988. The handwriting found in Ex.P.2 was also established to be the handwriting of the second accused. In fact, only on the

basis of the confession statement of the first accused. P.W.5 was traced and on his being pointed out by the first accused Ex.P.2 was seized from

him. That apart, from the first accused Ex.P, 12. an unsent complaint addressed to the Inspector of Police, Nilakottai. written by the first accused

stating that his wife was missing was also recovered.

(iv) These things would clearly show that the deceased was living with her husband, the first accused, under the same roof and also he knew the fact

of her missing from his house. Under these circumstances, it is for him to explain as to how she was missing and as to what steps he had taken to

trace her out. In the light of the above situation, his non-explanation assumes much importance.

(C) Another piece of evidence is the absconding of the first accused from 26.08.1988 to 29.08.1988. It is true that P. W.8 would admit that

accused 1. 3 and 4 were available at the scene of occurrence and he examined

them. But, at that time, their involvement in the crime did not one to light. As a matter of fact, in Ex.P.I, the complaint given by P.W. 1, it is specifically stated that the deceased must have committed suicide by falling into the well due to dowry torture. Therefore, at that time, investigation was taken up towards the circumstances that forced her to commit suicide and the case itself was registered only u/s 174 of the Code of Criminal Procedure as "suspicious death. Till this time, the accused persons were available for enquiry by the Revenue Divisional Officer. P. W.8, since they were not suspected of their involvement. But. when P.W. 15. the Deputy Superintendent of Police entered into the picture, by taking up the investigation, after receipt of the report of the Revenue Divisional Officer and after collecting information regarding the involvement of the accused, the accused immediately absconded from the village, especially when they came to know that the case altered into one u/s 302 of the Indian Penal Code on receipt of the final opinion of the doctor P.W.6 on 28.08.1988.

(ii)No doubt, it is true that the absconding b\ itself would not be a sufficient ground to infer that the accused perpetrated the crime. But. once the accused came to know that the materials were collected against them, then their decision to disappear from the village would create more suspicion of their involvement in the crime, especially when there is no explanation for their non-availability till 29-08.1988. As indicated above, this piece of evidence, by itself, would not be sufficient to connect the accused with the crime, but it would definitely be a corroborating factor to strengthen the other circumstances collected by the Investigating agency.

(d)Yet another material piece of circumstances is the recovery of pillow M.0.4, and the complaint Ex. P. 12 written by the first accused addressing the Inspector of Police. M.0.4 pillow was sent to chemical analysis and the chemical analysis report Ex.P.20 shows that the pillow, which was recovered at the instance of the first accused, on his confession, contained human blood. That apart, Ex. P. 12 also was recovered from his house by P.W. 15. the Deputy Superintendent of Police. P. W.9. the mahazar witness would speak about the confession of the accused, the admissible portion of which is marked as Ex.P.7 and about the recovery of pillow M.0.4 and the complaint. Ex.P.12 written by the first accused. Ex.P.12 is

dated 25.08.1988. It is mentioned therein that the first accused went to P.W. 1's house and brought his wife to his house; that there was a quarrel

between him and the deceased: that the deceased told him that unless she is taken back to P.W. 1's house she would commit suicide and that

thereafter, she was found missing.

(ii) About this recovery of Ex.P.12 from his house, there is no denial by the first accused, in his statement when he was questioned u/s 313 of the

Code of Criminal Procedure. Though a suggestion had been put to P.W. 10, the Village Administrative Officer and to P.W.15, the Investigating

Officer that Ex P. 12 was written at the police station, there is no material to establish the same. On the other hand, Ex.P.22 the handwriting

experts report shows that the handwriting found in Ex. P. 12 and the specimen signatures obtained from the first accused are one and the same.

(iii) Ex.P. 12, the complaint and M.O.4 pillow, being incriminating materials, the first accused must have given explanation as to how he came into

possession of these things. There is no such explanation forthcoming from the first accused on this aspect.

(e) The next circumstance is that there is no explanation from the first accused for the missing of his wife. Admittedly, the deceased was with the

appellant on the date of the occurrence. It is seen from Ex.P.6, the inquest report that the deceased was last seen by her husband, the first

accused. P.W.1 would state that he was informed by P.W.5 that the deceased was missing from the house of the first accused. At the instance of

the second accused, P.W.5 was able to trace out the house of P.W. 1 through Ex. P. 2, a chit containing the address of P.W. 1, written by the

second accused.

(ii) As indicated above, only at the instance of the first accused, P.W.5 was traced and Ex.P.2 was recovered from him. Only on receipt of the

information through P.W.5, P.W.1 came to the village of the first accused in a taxi along with others and he was informed by the fourth accused

that the deceased left the house by 5.00 p.m. on that day and she did not turn up.

(iii) In such a situation, the first accused, if he is not really involved in the crime, should have accompanied P.W. 1 to trace his wife or should have

taken steps through the authorities concerned for securing her. According to P.W

1 the first accused did not take any steps for searching the deceased. On the other hand, he prepared Ex.P.12 complaint as if the deceased would have committed suicide and kept that complaint with him. instead of sending it. This shows that he wanted to create evidence even on the date of the occurrence as if his wife committed suicide on her own accord. But it is clear that only because of his involvement in the crime, he did not venture to give complaint either to the Village Administrative Officer or to the Police Officer.

(iv)Therefore, the non-explanation on the part of the first accused, for not taking any steps to trace his wife; for the failure to give the complaint

Ex.P.12 written on the date of the occurrence and keeping it with himself, for not telling the information regarding his quarrel with the deceased, to the Revenue Divisional officer, P.W.8 during inquest, would definitely be another telling circumstance against the first accused.

(v) In a case of circumstantial evidence, when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation, which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

This proposition fully applies to the circumstances of the present case.

(f)(i)The last and the very important piece of evidence is the final opinion of Dr. Sasireka, P.W.6, who conducted post mortem on the dead body

of the deceased. Though she conducted post mortem on 27.08.1988. she did not give any final opinion on that day. She reserved her opinion till

the receipt of viscera report. When the chemical analysis report did not show that there was poisoning, she gave her final opinion that the deceased

would appear to have died of asphyxia due to smothering. Her evidence is also specific to the effect that smothering would have been either by

using a pillow or by using hands and only after the death, the body must have been thrown into the well. P.W.6 would further state that the blood

clots seen in the left nostrils of the nose could have been caused by some hard object like a pillow

(ii)In her cross examination. P.W.6 would state that the sudden fall into the well would cause sudden cardiac arrest and in the event of such falling,

water would be found in the upper organs or lungs In the instant case, admittedly, there was no water either in the upper organs or in the lungs.

Therefore, the theory of suicide put forward by the defence is completely ruled out.

(iii) Though the medical evidence by itself, would not be sufficient to decide the culpability of the accused, when the medical evidence in support of

the prosecution is against the plea of the accused, ruling out the theory of suicide, this court cannot reject the same and give the benefit to the

accused, by substituting its opinion to that of the Doctor, which is impermissible in law. In this context, it is held in *State of Punjab v. Ram Singh*

(ALU 1992 S.C. 2186) as follows:

It is needless to say that the Doctor who has examined the deceased and conducted the post mortem is the only competent witness to speak about

the nature of injuries and the cause of the death Unless there is something inherently defective, the Court cannot substitute its opinion to that of the

doctor

If this principle is applied to the facts of the case on hand, it is obvious that the evidence of the doctor, who is the competent witness to speak

about the cause of the death, can be accepted and acted upon, as there is nothing to indicate that the said medical evidence is defective. So. when

there is a clear medical opinion supporting the other circumstances, then this Court would definite use this part of the evidence as an additional

material to hold the first accused guilty of the charge of murder. In other words, the evidence of the doctor must be taken in conjunction with all

other circumstantial evidence on record.

(iv) As indicated above, the law is. fairly well settled that in a case of circumstantial evidence, cumulative effect of all the circumstances proved must

be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. The final opinion of the doctor

indicates that the wife of the first accused died due to smothering and not on account of falling into the well. The details found in the evidence of the

doctor as well as in the post mortem certificate, undoubtedly, support the other circumstances referred to above, which lead to the conclusion that

the death of the deceased was due to smothering.

(v) The Medical Jurisprudence explains that in a case of death due to drowning, the stomach ordinarily found bloated with air and water, which is

instinctively swallowed by the person while struggling for life. As laid down in

Kodali Purnachandra Rao and Another Vs. The Public Prosecutor,

Andhra Pradesh,) the facts that the stomach was not filled with water and bloated and no froth was coming out of the mouth of the deceased are

important symptoms which go a long way to exclude the possibility of death being as a result of suicide by drowning. So. the process of elimination

of suicide theory inevitably leads us to the conclusion that in all probabilities, the death of the deceased was due to culpable homicide.

(vi)The Medical Jurisprudence also explains that drowning is a form of death in which the atmospheric air is prevented from entering the lungs by

submersion of the body in water or any other fluid medium. The water in the lungs exits coughing and during violent expiratory efforts due to cough,

a certain amount of air is expelled from the lungs, and its place is taken up by water, which is drawn into the lungs. The weight of the body

increases and he sinks. He rises again to the surface by the involuntary movements of his limbs, and draws more water into the lungs in an effort to

keep above water, and consequently goes to the bottom. This alternate rising and sinking goes no longer than the proverbial three times, until all the

air has been expelled from the lungs and its place has been taken up by water. He then becomes insensible and sinks to the bottom to die. This is

how death occurs in case of drowning or suicide, by falling into a well.

28. Thus, the cumulative effect of the materials discussed above would, in our view, unerringly point towards the guilt of the first accused as the

various circumstances from which the inference of guilt of the appellant could be drawn have been cogently and fairly established, without any

missing link and all the circumstances taken cumulatively would form a complete chain, establishing the guilt of the first accused. Consequently, it

has to be held, as rightly found by the trial court, that the first accused caused the death of the deceased, his wife by smothering with the help of a

pillow and threw away the body of the deceased into the well.

29. In the result, we hold that the appeal has no merits and it is accordingly dismissed. The conviction and sentence imposed upon the

appellant/first accused by the Sessions Court are confirmed. The bail bonds, if any. are directed to be cancelled. The trial Court is directed to

secure the custody of the accused to undergo the remaining period of sentence.