

(1987) 06 CAL CK 0034
In the Calcutta High Court

Debar Kundu Rama Krishna Rao

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-06-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 302

Citation : (1988) CriLJ 345 : 92 CWN 365

Hon'ble Judges : Jitendra Nath Chaudhuri, J;A.C. Sengupta, J

Bench : Division Bench

Judgement

Jitendra Nath Chaudhuri, J.—This appeal arises out of a conviction of the appellant u/s 302 I.P.C. and sentence of imprisonment for life passed by the learned Additional Sessions Judge, Alipore.

2. The prosecution case, in short, is as follows:

On 20th/21st Jan. 1982 at 170/52, Lake Gardens within the P.S. Lake Gardens the accused, D.K.R.K. Rao committed murder of Sm. D. Shesharatnam. On 21-1-82 Gour Chandra Dey (P.W. 2) the informant in this case informed the police. He is the landlord of premises No. 170/52 Lake Gardens where he resides with his family on the 1st floor. In the ground floor of his house at the relevant time there were two tenants, viz., D. Rama Krishna Rao who occupied the eastern portion having two rooms and the another in Sri V. V. Sitapati Rao (PW. 4) who occupied the eastern portion one room flat. Sri Rama Krishna Rao took the rooms on rent in the month of Oct. 1981 and brought his wife on 5th Nov. 1981. Since then they were residing in these rooms. In the morning of 21-1-82 at about 6 a.m. accused came in front of the informant's flat and called him. When the informant came out, the accused reported to him that his wife was seriously ill. Informant told, him to bring a doctor and contact V. V. Sitapati Rao as the informant required to go to the toilet. The accused went away. At about 6.45 a. m. V. V. Sitapati called the informant down. He came down and found one

doctor (P.W. 3) of Emergency Doctor's Service with the accused and V. V. Sitapati in the drawing-cum-bed room of the accused. The informant remained outside the room. On his query, the doctor told the informant that Sm. D. Sheshratnam, wife of the accused was dead and that he was unable to ascertain the cause of death. Informant then advised the accused to go the P.S. and inform the police about the incident. At about 8.10 hours when the police came he was called in by the police. The informant went inside and noticed some marks of injuries on the front of the neck of the deceased Smt. Shesharatnam. It is an unnatural death and not a case of natural death, as reported by the accused earlier. He suspected it to be a case of murder committed by the accused. The information lodged by P.W. 2 was treated as the FIR in this case and was marked as Ext. 2/b. On the basis of that statement a formal F.I.R. was drawn up by the police, and Lake P.S. Case No. 43 dt. 21-1-82 was started. The case was investigated by P.W. 10 Mihir Kr. Gupta. He held the inquest of the deadbody and recorded the statements of the witnesses and also seized some articles from the place of occurrence. He also sent the body for post-mortem. He drew up the formal F.I.R. He obtained the post-mortem report and also got the plan of the place of occurrence prepared. He also obtained the Chemical Examiner's report. After completion of the investigation he submitted the chargesheet on 10-1-82. He also arrested the accused.

3. The prosecution examined 10 witnesses. Two witnesses were examined on behalf of the defence. The defence case is one of alibi and that the deceased in his absence might have taken some poison.

4. This case is dependent entirely on circumstantial evidence, as there is no eye witness. PW 2 is the landlord of the premises and lodged the first information at the police station which has been treated as the F.I.R. in this case. (Ext. 2/b). PW 4 is a resident of the ground floor of the premises in question, the only other tenant on the ground floor being the accused. PW 8 is the younger brother of the deceased. He had never visited the premises in question.

P.W. 3 is a doctor attached to the Emergency Doctor's Service at Lake Gardens who visited the premises in question and found the accused's wife was dead. P.W. 9 is the doctor who conducted the post-mortem examination on the body of the deceased. The rest are police witnesses. P.W. 1 is the official plan maker attached to the Detective Department, Lalbazar and he prepared the plan (Ext. 1). P.W. 5 is an official Photographer, attached to the Detective Department, Lalbazar and took three photographs in connection with this case as directed by the Investigating Officer. P.W. 6, a constable attached to Lake Police Station at the relevant time, identified the deceased to the doctor holding the postmortem examination (P.W. 9). P.W. 7 is a Head Constable who was attached to Lake Police Station as such, at the relevant time and carried a sealed packet, five service covers and two glass jars to the Forensic Science Laboratory under orders of the investigating officer. P.W. 10 is the investigating officer of this case.

5. Two defence witnesses were called to establish an alibi of the accused. Both

are employees of Hindusthan Paper Corporation at 75C, Park Street, Calcutta, in which concern the accused also was an employee. The said Corporation is a Government of India Undertaking.

6. Gour Ch. Dey, P.W. 2, is the landlord of the premises in question which is a two storeyed house. At the time of the incident he was in occupation of the entire first floor, while the ground floor was occupied by the accused and P.W. 4. The south-western two rooms flat on the ground floor was occupied by the accused while the south-eastern one-room flat was occupied by P.W. 4.

The accused was in occupation of the flat since 1st Nov. 1981 and surrendered the tenancy and vacated the flat on 31st Aug. 1982. Approximately one month after the commencement of his tenancy the accused brought his wife to the flat. The accused's flat had only door of entry and exit which was quite separate from that of the witness and P.W. 4.

7. On the 21st Jan. 1982 at about 5.30 or 6 a.m. he was suddenly aroused by a severe knocking on the door. On opening the door, he found the accused standing there very nervous and stupefied and the accused reported to him that the accused's wife was seriously ill. The accused sought the help of the witness as the accused did not know any local physician. Since the witness wanted to visit the toilet he asked the accused to contact P.W. 4 who was also a South Indian like the accused and was a co-tenant on the ground floor. The accused and P.W. 4 went for a doctor. The Emergency Doctor's service is in Lake Gardens and remains open for twenty four hours and was at a distance of about only 5 minutes journey from the house. 15/20 minutes later he was called downstairs as the doctor had come. On coming down, he found P.W. 4, the accused and the doctor. The doctor told him that the patient was dead and further that he was not able to make any diagnosis as to the cause of death. On demand the doctor (P.W. 3) refused to issue a death certificate and wanted them to have a talk with the Director of the Emergency Medical Service, Dr. Ghosh. They went to Dr. Ghosh, but he also refused to issue any certificate. Thereafter, at the request of the accused, P.W. 2, P.W. 3 (the Doctor) and P.W. 4 accompanied the accused to the local police station where the accused lodged an information with the police. The police came one hour later in the house. The accused had left his tenanted premises locked and when the police came he unlocked the door. The police and the accused entered the premises. Both P.Ws. 2 and 4 were requested by the police to witness the inquest on the dead body. The witness found the deadbody lying on a cot. He found a violet shade or a very faint violet shade below the larynx of the deceased within 2 to 4" inches. The witness signed the inquest report which was prepared at the spot. He reported the entire matter to the police who wrote down the same. He signed the FIR (Exts. 2 and 2/a). The police seized an empty bottle of Tik 20, a glass or cup and a piece of cloth under seizure lists which he signed (Exts. 3 and 3/a). He identified the empty bottle of Tik 20 seized on that occasion (Ext. I) as well as his signature on the label of the same. He also identified the seized glass and the piece of cloth (Exts. II & III

respectively) and his signatures on the same. From the garden abutting the house, the police also seized another empty (wine) bottle which he identified (Ext. IV), as well as his signature on the same. The police also seized a key in his presence under a seizure list on which he signed,

8. In cross-examination, he stated that the accused brought his wife at the end of November or the first week of December, 1981 to the flat. They lived quite happily together and he never witnessed any quarrel between them or any conjugal disharmony. On the 20th Jan. 1982 he did not meet the accused and retired to bed at about 10 or 10.30 p.m. He did not listen to any sound in the flat of the accused to indicate the presence of the couple in the flat. It was a cold day. It was suggested to him that on the 21st morning, the accused reported to him, being bewildered that in the night the accused was not present and at dawn oncoming he found his wife seriously ill. In answer, the witness stated that the accused told so many things that he could not make out their meaning and import, but the only thing he could understand was that the accused's wife was seriously ill. He was talking in south Indian dialogue mixed with Hindi, so the witness could not understand the whole of the version. When the doctor first came and examined the patient, the witness was not there. The doctor did not give any death certificate. He first entered the room of the accused on 21-1-82 after being called by the Police. In the police station the witness narrated the incident in Bengali mixed with Hindi. Darogababu also recorded such statement of the accused. The accused was a tenant at a rental of Rs. 350/- per month. He denied that he was deposing falsely.

9. V. V. Sitapati Rao, P. W. 4, was a tenant of the ground floor flat to the east of that of the accused and he was residing there since Dec. 1981. In Jan. 1982 there were no other tenants excepting he and the accused on the ground floor. P.W. 2 the landlord used to reside on the first floor. On 21st Jan. 1982 at about 6 a.m. P.W. 2 called him to render some help to the accused in securing the services of a doctor as the accused's wife was seriously ill. At 6.15 a.m. the accused came to him and both of them went to the Emergency Doctors' Service at Lake Gardens and brought back a doctor to the house. The doctor and the accused entered the accused's flat while the witness waited on the verandah outside the flat. After sometime the doctor came out and by that time P.W. 2 had also come to the verandah where the witness was waiting. The doctor told P.W. 2 in Bengali that the patient was already dead. Thereafter, P.W. 2 asked him to accompany him to the police station and he, P.W. 2, and the accused went to the local police station, where P.W. 2 reported the matter to the police.

10. The police officer came with them to the house and began investigation. He did not remember who opened the door of the accused's flat when they came back with the doctor from the Emergency Health Service, as the witness was on the verandah. He also did not remember who opened the door when they came back from the police station. After the police came he went back to his flat and as such he did not see what was done by the police after entering the flat of the

accused. Between 12 to 1 p.m. the police seized some articles from the accused's flat and the compound outside under seizure list which he signed. The police seized one Whisky bottle from the compound outside the accused's flat. From the accused's flat the police seized a Tik-20 bottle one glass and one cloth. The witness identified these exhibits and the signatures on the labels and the seizure lists. When they came back with the doctor no one was present near the accused's flat or inside the same (except the deceased), but the witness was standing outside the room.

11. In cross-examination, he stated that his statement was recorded by the police at the police station on 21st Jan. before 1 p.m. (He had already stated in examination-in-chief that at about 10 a.m. he and P.W. 2 were asked by the police to go to the police station from the house, after the police had arrived, and accordingly they had gone to the police station). The accused became a tenant before the witness became a tenant in the premises. He denied that he was deposing falsely.

12. P. Venkataswar Rao, P.W. 8, is the brother of the deceased and hails from Andhra Pradesh. He deposed that his elder sister Shesh Ratnam was married to the accused on 16-8-81. He identified the photo of the deadbody, taken by P.W. 5 (photographer attached to the Detective Department, Lalbazar) as being that of his said sister. After marriage, she remained in her own house, where P.W. 8 also resided, for one month and thereafter, in Nov. 1981 she left for Calcutta with the accused. He never visited his house at Lake Gardens. On 23-1-82 on receipt of a message sent to his mother by the police he came to Calcutta and took the deadbody which was cremated. The deceased wrote only one letter home after going to Calcutta. He had no knowledge whether the relationship between the couple was cordial or bitter.

13. In cross-examination, he stated that no complaint was ever made by his sister Shesh Ratnam either against the accused or against anyone else.

14. Dr. T. N. Roy, P.W. 3, is a member of the West Bengal Medical Service and at the relevant time was attached to the Emergency Doctors' Service at Lake Gardens. On 21-1-82 he attended Mrs. D. Shesh Ratnam at 170/52, Lake Gardens, Calcutta. At 6.45 a.m. he visited the house and found she was dead. Her pulse was not perceptible and both hands and both legs were cold. He gave a death declaration (Ext. 8) at the Emergency Medical Service's Office. He identified his writing and signature on Ext. 8. He issued no Medical Certificate. As he found it to be an unnatural death he did not issue any death Certificate. The address of the Emergency Health Service is A/165, Lake Gardens and this Emergency Doctors' Service renders medical assistance on receipt of charges.

15. In cross-examination, he stated that after joining the Emergency Medical Centre that was the first case where he attended the house of a patient. He found the patient already dead. He did not issue any death certificate which requires that the cause of the death has to be stated. He only gave a death

declaration. He denied that he granted a death certificate to the accused.

16. Dr. Rabindra Basu, P.W. 9, conducted the post-mortem examination on the deceased, identified by P.W. 6 (a constable attached to Lake P. S. at the relevant time). He held the post-mortem examination on 22nd Jan. 1982. He was a Reader of Forensic and State Medicine, B.S. Medical College at the time when he deposed in Mar. 1984. He is an M.B.B.S. and Master of Forensic Medicine of the Calcutta University. In Jan. 1982 he was posted as Lecturer, Department of Forensic and State Medicine, Medical College, Calcutta. He found the subject to be a Hindu female, aged about 24 years moderately nourished. The face was congested, eyes closed, cornea, hazy, and pupils dilated. Haemorrhagic spots over the* sclera and forehead. No Ligature material. The tip of the tongue was pressed between the teeth.

17. He found the following injuries on the deadbody : - (1) One elliptical nail scratch abrasion 2" x 1" placed obliquely over lower part of the face, along left side body of Mandible, placed 1.5" to the left of symphysis Menti. (2) One elliptical nail scratch abrasion 2" x 1" placed obliquely over lower part of left side of face, being placed 1" lateral to injury No. 1. There was diffused bruise, reddish in colour underneath both injuries 1 and 2. (3) Two elliptical nail scratch abrasion each measuring 2" x 1" place obliquely over left side of lower part of neck in front, just to the left of Mid line. Each placed 3/4" apart, placed 2 1/2" above the left sternoclavicular junction. (4) Three Elliptical nail scratch abrasions each measuring 2" x 1", each placed 1/2" apart from the other, placed obliquely over lower part of front of neck, medial one, just over the mid-line, 3/4" above, the injury No. 3 and 1/4" above the right sternoclavicular junction. (5) One diffused bruise 2" x 1 1/4" reddish in colour over lower part of front of neck around mid line. (6) One diffused bruise, 3" x 2 1/2" reddish in colour, placed abliquely over left side of upper part of the front of neck. (7) One diffused bruise 2" x 1" reddish in colour, placed obliquely over the right side of upper part of front of neck. (8) One transverse continuous ligature mark, measuring 12 1/4" x 1.2" around lower part of front of neck. The ligature mark starts at a point, 2" below, left angle of Mandible, to pass over to left side of front of neck to cross the mid line over the front of thyroid cartilage, to pass 2" below right angle of Mandible to pass over to back of neck. The skin over the ligature mark was found abraded and contused with evidence of contusion above and below the ligature mark on further dissection of the deadbody. He found the following injuries in the deabody:

1. The extensive extravasation of fluid and clotted blood seen to have infiltrated deep into the tissues of neck in front. (2) Subluxation of left corner of hyoid bone with extravasation of blood around. (3) Subluxation with tear over the body of thyroid cartilage near mid-line with extravasation around. All the injuries above, according to the witness, showed evidence of vital reaction. No other injuries except those described were detected, even on careful dissection and examination under a hand lens. No foreign body detected. On examination of the

internal organs, he found them mostly congested and noted the following against the particular organs:

In larynx and Trachea Mucus Membrane was congested and lumen contained fine froth mixed with blood. Lungs - Both lungs were congested and Oedematous, with evidence of tardieu's spot all over both the lungs. Heart was otherwise healthy, contained fluid blood, stomach contained 400 grams of partly digested rice and vegetable etc. with smell of alcohol. He preserved the viscera in saturated solution of common salt with control and blood without preservation in separate glass jar, properly sealed and labelled and sent them to chemical examination through police station. He also preserved samples of scalp hair, nail cuttings and scrapings, blood, soaked in blotting paper and control, wearing apparels as noted and vaginal swab and slide and sent them all in separate sealed and labelled packets to police station. In his opinion, the death was due to the effects of manual strangulation, associated with strangulation by ligature, which were antemortem and homicidal in nature.

18. On 22-1-82 at 2/5 p.m. he examined one D. R. K. Rao (the accused) brought and identified by Ramswarup Singh, Head Constable of Lake Police Station. On examination, he could not detect any visible external injury on the body of the said person. The nail cutting and scraping were taken and sent to Police Station under sealed cover.

19. The witness deposed that if alcoholic smell is present in the stomach it can be presumed that the person consumed some alcoholic beverage. The effect of alcohol is different on different person. Depending upon the quantity and the quality of the alcohol consumed, it may induce a person to sleep due to the depression of the cerebral centre.

20. In cross-examination, he deposed that the victim was moderately nourished. The ligature mark, as found was most unlikely to have been caused by a saree or dhoti in intact condition. In the case of strangulation the victim is normally expected to resist provided the person is conscious. It could not be said which was caused first - the manual strangulation or the strangulation by the ligature, but both were antemortem in nature.

21. S.I. Mihir Kr. Gupta, P.W. 10, is the Investigating Officer. On 21-8-82 he was attached to Lake Police Station. On that day at 7.45 a.m., while he was on duty at the P.S. the accused came to the Police Station with a Certificate showing that one D. Seshratnam was dead (Ext. 8) and informed him that in the previous night at 3 a.m. he found his wife in an unconscious state in the room of 170/52, Lake Gardens where they lived together. He along with some local people called a doctor from the Emergency Doctors' Service at A-165, Lake Gardens at about 06.30 hours and the doctor declared her dead. This report was recorded by the witness in the General Diary entry No. 1119 dt. 21-1-82 and the accused verified the same after going through the contents. The witness wrote and signed the said entry (Ext. 9).

22. Thereafter, along with the accused he went to 170/52, Lake Gardens. On arrival, the witness called the landlord (P. W. 2) and a tenant (P.W. 4) who both came. Thereafter, the accused opened the lock of the entrance door of his ground floor flat. On entering he found the dead body of a lady on a cot, identified as Seshratnam by the accused. He found her neck covered with a saree. On removing the saree he found some marks of injuries on her. He held an inquest there and then. Thereafter, he recorded the statement of P.W. 2 under orders of the O.C. which was treated as the F.I.R. (Ext. 2/b). On the basis of the accused's information given at the P.S. recorded in Ext. 9 only an u/d case had been started, being Case No. 2. After recording the statement of P.W. 2, in the presence of the O.C. he began investigation in the present case. He found the doors and windows of the room of the accused in which the body was found in proper order. The door of the kitchen to go outside the flat was bolted from inside the flat. All the windows of the flat were closed from inside the flat. He requisitioned the services of a photographer from Lalbazar who took photograph. The Fingerprint Expert was called, but no comparable finger print was available. Therefore, he seized various articles under seizure list in the presence of witnesses, P.W.s 2 and 4. He seized one white dhoti with red border, with a fresh cut end. One stainless steel glass with tamarind space and one phial of Tik-20 which was half empty, all from inside the said room, under a seizure list (Ext. 3c). He seized one empty bottle of wine from the adjacent garden under another seizure list (Ext. 3f). He recorded the statement of P.W. 4. Thereafter, he seized the key of the accused's flat as produced by the accused under another seizure list (Ext. Cd). He identified the body of P.W.6 - a constable of Lake P.S. and sent the body for post-mortem examination to P.W. 6. He arrested the accused and returned to the P.S. at 13.00 hours. On return, he drew up the formal F.I.R. (Ext. 2c). On 22-1-82 he sent a requisition for post-mortem examination of the deceased and for the examination of the accused by the doctor. He examined witnesses including the doctor of the Emergency Service, Lake Gardens on the same day. He further examined witnesses on 27-1-82. He obtained the Chemical Examiner's report (Ext. 10). After completing investigation, he submitted the charge-sheet on 10-1-83.

23. He returned the seized key to the accused on 26-4-82 after his release, as the key was necessary for the accused. He did so as directed by the officer-in-charge after having a General diary entry.

24. In cross-examination, he denied that in the General diary entry, Ext. 9, he had suppressed some important facts narrated by the accused. He stated that he wrote everything that was told by the accused in the said entry. He denied that the death certificate which was produced by the accused was not the document - marked Ext. 8. He denied that the statement which he recorded as the statement of P.W. 2 was not his statement. He denied that without trying to find out the real culprit he had falsely implicated the accused in this case.

25. In his examination u/s 313 Cr. P.C. he admitted that he came to reside in the

ground floor two-roomed flat at 170/52, Lake Gardens since 1-11-81, that P.W. 2 was the owner of the house and that P.W. 4 used to live on the back side flat. He further stated that he vacated the house on 31-8-83. He further admitted that on 21-1-82 between 5.30/6 a.m. he woke P.W. 2 by severely knocking at the door and that P.W. 2 found him very nervous and stupefied. He further admitted that he told P.W. 2 that his wife (i.e. the accused's wife) was seriously ill and sought his help in securing the services of a doctor. He further stated that after arrival the doctor told P.W. 2 who came down that the patient was already dead. P.W. 4 was also there. He also admitted that after one hour when the police came to the spot he unlocked the door of the flat. He also stated that a violet (Beguni) shade 2/4" below the larynx was found on the deadbody lying on a cot in his flat. He further admitted that the police entered the flat, held an inquest in the presence of P.W.s 2 and 4 and also seized articles in his presence and that, P.W. 2 lodged an F.I.R.

26. He further admitted that P.W. 4 on 21-1-82 at 6 a.m. was asked by P.W. 2 to render help for securing the services of a doctor for the accused's wife and that, P.W. 4 took him to the doctor of the emergency doctors' service. He further admitted that both P.W.s 2 and 4 were on the ground floor verandah when the doctor came out of the accused's flat and reported that the patient was already dead.

27. In answer to the question "Do you like to say anything further?" He answered as follows - "On 20th January, 1982 I was on leave. I had been to Durgapur along with my Office colleague. At about 3 a.m. in the night I came back, I reached my house at about 4.30 a.m. At 4.30 a.m. I knocked at my door and called my wife. The door was not bolted from inside. It was opened. I called my wife and she did not respond. I found a Tik-20 bottle in the wall window. In which 3/4th portion of the bottle was empty. I was under the impression that she might have taken some poison. I mixed up some tamarind liquid and poured it in her mouth. When there was no response I was very much bewildered and puzzled and rushed to my Bariwalla. I narrated the incident to my Bariwalla. I requested Bariwalla to secure some doctor's help. He came down and called Sitapati Rao. I stated the fact to Sitapati Rao also. Both tried to ring a doctor. Doctor came and declared her as dead. The doctor suggested to inform the police. I along with my Bariwalla and Sitapati Rao went to the police station. I narrated everything at the police station as to what had happened. The police accompanied myself and Bariwalla to our house. After making inquest he took both of us again to the police station. They wrote everything on paper. After writing, they asked me to sign the same and I signed. My Bariwalla also gave some statements before the police. After that, the police arrested me.

I have nothing to say further.

28. P.K. Trivedi, D.W. 1, an employee of the Hindusthan Paper Corporation at 75/ C, Park Street Calcutta-16 deposed that the accused was an employee of that Corporation. He proved a leave application of the accused dt. 20-1-82 seeking

leave for 20-1-82 for personal work (Ext. B). The said Casual leave for one day only was sanctioned on 21-1-82. (B/1). The said leave was sanctioned by one Mr. S. B. Palit who has since retired from service. The witness proved his signature being Ext. B/1.

29. Amal Krishna Karmakar, D.W. 2 an employee under Hindusthan Paper Corpn., deposed that the accused worked in the same office. On 20-1-82 after meeting at the Office he and the accused went to Durgapur by 7 UP Toofan Mail at 10.10 a.m. They went to D.C.L. in search of a better job. They returned to Howrah by Mogal Sarai fast Passenger from Durgapur which reached at about 3.30 a.m. He could not give the scheduled time of arrival of the said train. By the first available taxi the accused left for his house, while he remained waiting for a taxi to go to his own house at Salt Lake till 4.10 a.m. when he got a taxi.

30. In cross-examination on behalf of the prosecution he deposed that he worked in the Accounts while the accused worked in the Forest Department in the said Office. He deposed that he was on casual leave for 5 days prior to 22-1-82 and joined Office on 22-1-82. He could not produce any paper showing that he had taken casual leave for those days and stated that even if time is given it would not be possible for him to produce the papers. On joining office on 22nd January even after coming to know about the arrest of the accused in connection with a murder case he did not meet the police to inform them that he and the accused had gone to Durgapur on 20-1-82 and returned to Calcutta on that night at about 3.30 a.m. He never went to police and informed anything. He also did not inform any officer of his office that he and the accused had been to Durgapur on 20-1-82, He denied that the story of going to Durgapur along with the accused and coming back at 3.30 a.m. in the night of 21-1-82 was false. He denied that he was deposing falsely to save the accused. He further denied that he came every day to Court during the trial with the accused and stayed inside the Court room during the trial.

31. The learned Advocate for the appellant submitted that the prosecution had not alleged or proved any motive for the crime, the conduct of the accused was consistent with his innocence, the medical evidence did not show that the alcohol consumed by the deceased was sufficient to render her powerless to resist, no injuries had been found on the accused, the defence plea of alibi had been proved and the circumstances taken together left room for doubt.

32. The learned Public Prosecutor for the State submitted that the defence had failed to prove the plea of alibi, it was a clear case of homicide where the circumstances including the conduct of the accused left no-room for doubt and the nature of injuries on the victim clearly indicated the intention to kill.

33. In, a case based on circumstantial evidence only, each of the circumstances must be established beyond all reasonable doubt according to the standard of proof laid down in Section 3 of the Evidence Act, and the chain of circumstances so established must be consistent only with the guilt of the accused and must be

incapable of being explained by any other reasonable hypothesis other than the guilt of the accused. In short, the said circumstances in their totality, must point unerringly to the guilt of the accused and be wholly incompatible with his innocence.

34. It is settled law that the prosecution is not bound to prove motive in any case whether it be based on direct or circumstantial evidence or a combination of both.

35. In our view, on the material on record the accused has failed to prove his plea of alibi. We cannot place any reliance on the evidence of P.W. 2, who has obviously deposed in order to try and save the accused who is his colleague in office. If, in fact, the accused had gone with him to Durgapur and returned at 3.30 a.m. on the morning of 21-1-82, it is inconceivable that even after coming to know that the accused had been arrested in connection with a murder case he would not tell any of the Officers in his Office or the police that the accused could not have committed the offence since the accused had returned to Howrah Station at 3.30 a.m. on 21-1-82.

36. The following circumstances have been established beyond all reasonable doubt in this case on the materials on record:

(1) the room in which the deceased was found used to be occupied only by the deceased and the accused who were husband and wife.

(2) when the police arrived the windows of that room were locked from inside.

(3) when the police arrived the door of the kitchen to go outside the flat was bolted from inside the flat and the only other door. i.e. the front door was found locked from outside and it was opened by the key produced by the accused.

(4) That the key was handed back to the accused by P.W. 10, the I.O., after the accused was released on bail before his trial began, as the key was necessary for the accused. This shows that there was no other key.

(5) The conduct of the accused in requesting for help by telling both P.Ws. 2 and 4 at about 6/6.30 a.m. on 21-1-82 that his wife was "seriously ill", as deposed to by both P.Ws. 2 and 4, and as admitted by the accused in his examination u/s 313 of the Code. The Medical Evidence of P.W. 9 clearly establishes that it was not a case of illness, but a death due to the effects of manual strangulation, associated with the strangulation by ligature, ante-mortem and homicidal in nature. It is significant that P.W. 2 found violet shade or a very faint violet shade below the larynx of the victim.

(6) the accused did not remove the wrapping around the neck of the victim before contacting P.Ws. 2 and 4. If the accused had really thought his wife seriously ill it is expected that he would have removed the Wrapping around the neck to give relief to the patient.

(7) There is no evidence that the accused told any of the witnesses that he had not been at home at night and had returned from Durgapur and found out his

wife lying in that condition. In fact, it was not even suggested, to any of the witnesses except P.W. 2 that he had made any such statement to any of them.

(8) The conduct of the accused is obviously planting a partly empty Tik-20 bottle to prove that his wife had committed suicide by taking poison. In view of the medical evidence "Tik-20" had nothing to do with the death of the victim.

(9) The false plea of alibi taken by the accused (it has been held by the Supreme Court in the case, reported in Balwinder Singh alias Dalbir Singh Vs. State of Punjab,), that a false plea of alibi is also an incriminating circumstance giving right of inference of guilt even in a case based purely on circumstantial evidence.

(10) The conduct of the accused in going to the police station and making the statement to P.W. 10 at 7.45 a.m. on 21-1-82 as deposed to by P.W. 10 and recorded in Ext. 9 by P.W. 10 that he found his wife in the previous night at 3.30 a.m. in an unconscious state in the room of 172/52, Lake Gardens where they lived together. It is significant, however, that in his examination u/s 313 of the Code he stated that he reached his house at about 4.30 a.m.

(11) The conduct of the accused in not contacting any one before 6 a.m. on 21-1-82.

(12) Even if it is accepted that the accused came home at 4.30 a.m. on 21-1-82, as stated by him in his examination u/s 313 of the Code it would still leave ample time for him to commit the offence and thereafter, contact the P.Ws. 2 and 4 at 6 or 6.30 any that morning.

37. The fact that no injuries were found on the accused is really of no consequence, since the victim may have been attacked while asleep by the accused who was her husband. Moreover, P.W. 9 detected the smell of alcohol in the stomach of the victim showing that she was under the influence of alcohol, which apart from inducing sleep may have rendered her powerless to resist. Moreover if a husband suddenly attacks his wife at night in the bedroom it is expected that she will be an unsuspecting victim.

38. We are of the view that the circumstances, discussed above, establish beyond all reasonable doubt the guilt of the accused and are wholly incompatible with his innocence. The very fact that the victim was subjected to manual strangulation as well as strangulation by ligature before she died, clearly show that the intention of the accused was to kill the victim.

39. We accordingly uphold the conviction of the accused-appellant u/s 302 I.P.C. and the sentence of imprisonment for life passed by the learned Trial Court.

40. The appeal is dismissed. Let the record be sent down forthwith.

A.C. Sengupta, J.

41. I agree.