

(1975) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1215 of 1972

Khaja Begum

APPELLANT

Vs

Gulam Mohiuddin and Others

RESPONDENT

Date of Decision : 09-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 22 Rule 4, 153, 52
Hyderabad Money Lenders Act, 1349 — Section 2(4), 9(2)

Citation : AIR 1976 AP 65

Hon'ble Judges : Gangadhara Rao, J; Alladi Kuppuswami, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Karuppaswamy and Others Vs. C. Ramamurthy, AIR 1993 SC 2324 : (1993) 2 BC 341 : (1993) 4 JT 192 : (1993) 3 SCALE 165 : (1993) 4 SCC 41 : (1993) 1 SCR 121 Supp

T. Meena Kumari, J.—This appeal is preferred by the State against the judgment of acquittal dated 27.10.2004 passed in S.C. No. 349 of 2001 on the file of the Court of I Additional Metropolitan Sessions Judge, Hyderabad.

2. The case of the prosecution, briefly stated, is as follows:

The accused Nageshwar Rao married the deceased Laxmi Kumari on 30.4.2000 at Annavaram Temple, East Godavari District and both of them are native of Khammam District. The accused is a B. Tech Mechanical Engineer and working at Ameerpet, Hyderabad. They were residing at Yellareddyguda in the house of Smt. Saroja as tenants for the past one year prior to the date of incident. Though they lived happily for some time, subsequently differences arose between them and due to frequent quarrels with his wife on several issues initially the accused decided to commit suicide and for that purpose he procured cyanide from his friend Brahmachary (PW-4), who is a goldsmith by profession. However, due to increased non-cooperation of the deceased on the issues like food, wearing of dresses, sending money to his parents, stay of his brother in his house with them, taking her to USA with him etc., the accused changed his mind

and wanted to get rid of his wife and was waiting for opportunity to do away with the life of his wife. While so, on 2.9.2000 at about 4 p.m. or so the deceased expressed her desire with the accused to have a cool drink. The accused immediately went to a nearby general store and purchased Limca soft drink and brought the same to nearby STD booth cabin and mixed some quantity of cyanide, which he was possessing, in the Limca bottle and gave it to his wife for consumption. When she requested him to share the said Limca, he avoided the same and went away from the house on the pretext of attending urgent work at the Computer Institute. The deceased consumed some quantity of the said Limca and collapsed in the house. When the house owner PW-7 received a phone call for the deceased and went to the portion of the deceased to call her, she did not get any response when she knocked the door and then she peeped through the window and saw the deceased lying on a chair. She immediately called PW-3 maidservant and both of them shifted the deceased to Mytri hospital. In the morning of 3.9.2000, the brother of the accused informed PW-1 the father of the deceased through phone that his daughter Laxmi Kumari fell seriously ill and was admitted in the hospital. Immediately, he along with his wife rushed to Hyderabad on the same day and went to the hospital and found their daughter in unconscious state. While undergoing treatment, the deceased was declared dead by the doctors of Mytri Hospital on 3.9.2000 at 8.30 p.m. There upon, PW-1 went to the police station and lodged a complaint before the Police, S.R. Nagar Police Station at 9.15 p.m. stating that he received message about his daughter's illness and he came to Hyderabad and he does not know under what circumstances his daughter died and therefore to look into the matter and take necessary action. Basing on Ex.P-1 complaint given by PW-1, the police initially registered a case in Cr.No. 589 of 2000 u/s 174 of the Code of Criminal Procedure and took up investigation and shifted the dead body to Gandhi Hospital for post mortem examination. PW-15, S.I. of Police, visited the place of occurrence and conducted scene of observation panchanama under Ex.P-5 and also prepared rough sketch Ex.P-6 in the presence of mediators PW-12 and another. As the deceased died under suspicious circumstances within seven years of her marriage, he sent a requisition to the Revenue Development Officer for deputing the Mandal Revenue Officer for conducting inquest. PW-11 Mandal Revenue Officer conducted inquest on the dead body of the deceased in the presence of the mediators PW-9 and another and she also examined the parents of the deceased and recorded their statements. PW-14 Civil Assistant Surgeon, Gandhi Hospital conducted autopsy over the dead body of the deceased on 4.9.2000 at Gandhi Hospital and preserved the visra for the purpose of sending it to FSL for analysis. When the statements of PWs 1 and 2 were recorded, they have expressed doubt over the husband of the deceased and the brother-in-law of the deceased for the death of their daughter. Therefore, the then Investigating Officer altered the Section of Law from Section 174 Cr.P.C. to Sections 498A and 306 IPC. On 7.9.2000 PW-18 Investigating Officer arrested the accused and interrogated him in the presence of PW-12 and another and then the accused voluntarily confessed before the mediators that he killed his wife by mixing

cyanide in the Limca soft drink and made her to drink the same on 2.9.2000 at 4.30 p.m. in his house, according to his pre-arranged plan as the deceased was non-cooperative with him in his conjugal life and she always used to quarrel with him over several issues. After receipt of Exs.P-15 and P-16 FSL reports and after completion of investigation, due to the transfer of PW-18, the successor of PW-18 filed charge sheet against the accused for the offence punishable u/s 302 IPC.

3. The learned V Metropolitan Metropolitan Magistrate, Hyderabad registered the same as P.R.C. No. 16 of 2001 and furnished copies of the documents to the accused and as the offence alleged against the accused is exclusively triable by the Court of Session, the learned Magistrate committed the case to the Court of Session vide committal order dated 30.7.2001. After such committal, the learned Metropolitan Sessions Judge, Hyderabad numbered it as S.C. No. 349 of 2001 and made over the case to the Court of I Additional Metropolitan Sessions Judge, Hyderabad for disposal.

4. On hearing both sides and on perusing the record of investigation, the learned I Additional Metropolitan Sessions Judge, Hyderabad framed charge against the accused u/s 302 IPC and read over and explained the same to him for which he pleaded not guilty and claimed to be tried.

5. To substantiate its case, the prosecution, in all, examined PWs 1 to 18 and got marked Exs.P-1 to P-20 besides M.O.1 Empty Limca Bottle.

6. After closure of the evidence of the prosecution, the accused was examined u/s 313 Cr.P.C. with reference to the incriminating circumstances found against him in the evidence of the prosecution witnesses, which he denied and stated that a false case has been foisted against him. The accused did not examine any witness nor did he mark any document on his behalf.

7. After considering the evidence available on record, the Court below found the respondent - accused not guilty of the charge framed against him and accordingly acquitted him of the said charge. As against the said judgment of acquittal, the State preferred this appeal.

8. Heard the learned Public Prosecutor appearing for the appellant - State and Sri C. Padmanabha Reddy, learned senior counsel appearing for the respondent - accused.

9. It is vehemently contended by the learned Public Prosecutor that this is a barbaric offence of committing murder of the deceased by her own husband by mixing cyanide in the soft drink and the Court below has dealt with the case in a casual manner without considering the evidence available on record. He contended that though it is a case which rests on circumstantial evidence, the chain of events is so complete and the finding of the Court below that the chain of events did not form the link with each other is absolutely not based on proper appreciation of the evidence. He argued that PWs 1 and 2 are the parents of the deceased who immediately rushed to the hospital on receiving the intimation

from the brother of the accused that their daughter fell seriously ill and was admitted in the hospital and their evidence did not disclose as to at any point of time the respondent - accused talked to them and shared the tragedy and it reveals the conduct of the accused in avoiding the parents of the deceased as he committed murder of the deceased. The learned Public Prosecutor further pointed out the evidence of PW-2 wherein PW-2 deposed that soon after his father left the hospital leaving him and his mother at the hospital the accused absconded from the place and contended that nothing prevented him to stay over there had he not committed the offence. He stressed on the evidence of PW-4 and contended that though he confessed before the learned Magistrate while giving statement u/s 164 Cr.P.C. that he provided cyanide to the accused while the latter approached him for the same on the ground of cleaning computer parts, he retracted from such confession and deposed before the Court that he gave the statement before the Magistrate because of the threat by the police; however, the evidence of PW-4 clearly discloses that he is a goldsmith by profession and he is a friend of the accused and he only deposed before the Court that he gave statement before the Magistrate due to the threat of the police but he did not deny that he has given cyanide to the accused. He further argued that the evidence of PW-3 and PW-7 goes to show that the deceased was shifted to hospital by them and the evidence of PW-6 clearly establishes that he sold Limca bottle on the fateful day to the accused on depositing Rs. 15/- for return of the bottle but the accused did not return the bottle and it supports the case of the prosecution that empty Limca bottle was recovered in pursuance of the confession made by the accused. He also contended that the FSL reports under Exs.P-15 and P-16 clearly reveal that visra and the limca bottle contained cyanide and thus it is clearly made out that the deceased died of consuming the Limca in which cyanide was mixed by the accused and the Court below, without taking into consideration all these aspects, erroneously held that the respondent - accused is not guilty of the offence punishable u/s 302 IPC and therefore the same is liable to be set aside. It is further contended by him that no explanation is forthcoming from the husband of the deceased i.e. the accused as to the cause of death of the deceased and it is not the case of the defence that it was a case of suicide. Even if the reason attributed in the confessional statement of the accused that the deceased was not properly taken care of by her father for treatment of spondilitis and migraine headache is to be relied upon, the same is not supported by any evidence and it was only a false story invented by the accused.

10. On the other hand Sri C. Padmanabha Reddy, learned senior counsel appearing for the respondent - accused strenuously contended that there is absolutely no evidence to come to the conclusion that the respondent - accused has committed murder of the deceased and therefore the Court below rightly acquitted the respondent of the charge leveled against him. It is further contended by him that PW-4, who according to the prosecution supplied cyanide to the respondent - accused, did not support the case of the prosecution and

there is no evidence to the effect that the deceased was administered cyanide by the respondent - accused. The learned senior counsel further argued that the evidence of PW-2 goes to show that the respondent - accused was detained in the police station since 4.9.2000 and therefore the alleged confession and the seizure of M.O-1 cannot be believed and therefore the Court below rightly discarded the same. It is further contended that when the deceased was admitted in the hospital, no symptoms of poisoning were found by the doctor who gave treatment to the deceased and it was stated by the doctor that the deceased developed cardiac arrest and therefore she was put on ventilator and on the next day she again developed cardiac arrest and she was declared dead on 3.9.2000 at 8.30 p.m. and therefore the Court below rightly disbelieved the case of the prosecution that the deceased died because she was administered cyanide by mixing the same in Limca bottle. Thus, the learned Counsel contended that the judgment of the Court below is based on proper appreciation of the evidence available on record and therefore the same needs no interference.

11. Having heard the submissions made by the learned Public Prosecutor and the learned senior counsel appearing for the respondent - accused, we have once again carefully perused the entire evidence available on record. We have also taken note of the fact that this is an appeal against acquittal and the scope for interference with the judgment of acquittal is limited and unless it is found that the evidence has not been properly analysed by the trial Court and the conclusions drawn are based on surmises and conjectures, such judgment of acquittal cannot be interfered with. Further, this is a case which rests totally on circumstantial evidence and the settled principles which must be borne in mind while dealing with a case based on circumstantial evidence are that (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) 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 (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12. Bearing in mind the above principles, we now proceed to appreciate the evidence in order to find out whether the judgment passed by the trial Court is to be sustained or not.

13. PW-1 is the father of the deceased Laxmi Kumari. He deposed as to the performance of marriage of his deceased daughter with the accused on 30.4.1999 at Annavaram Temple of East Godavari District. He further deposed that one B.N. Chari of Velerupadu and one M. Satyanarayana of Raigommu village were mediators of the marriage between the deceased and the accused;

that the accused, his mother, his maternal uncle, younger brother of the accused Seshagiri Rao demanded an amount of Rs. 5,00,000/- towards dowry besides a motor cycle, gold articles, furniture and household articles and he agreed to pay an amount of Rs.3,69,000/- and accordingly he paid the said amount of Rs. 3,69,000/- just before the marriage in the temple premises to the mother of the accused and his maternal uncle in the presence of other relatives and also presented 50 tolas of gold to his deceased daughter apart from giving household articles and furniture. He further deposed that the accused was working in Computer Institute as Faculty Member and for some time after the marriage both the deceased and the accused lived happily and thereafter the accused started demanding money from him. His evidence further discloses that on 21.8.2000 he sent a message to his deceased daughter and the accused to attend the marriage of his second son which was held on 23.8.2000 but the deceased alone came to his village to attend the marriage and afterwards she returned to Hyderabad on 31.8.2000; that on 3.9.2000 the younger brother of the accused Seshagiri Rao informed him through telephone that his daughter was admitted in Mytri Hospital due to ill health and on the same day at about 8.00 p.m. they went to Mytri hospital and saw the deceased in ICU while undergoing treatment. He further deposed that the deceased was in unconscious mind and while he was at hospital at about 8.30 p.m. doctors called him inside the room where his deceased daughter was undergoing treatment and informed him about the death of his daughter. It is to be further seen from his evidence that he enquired with the accused as to what had happened to the deceased and the accused informed him that he was in the Institute and therefore he does not know what had happened to the deceased and that PW-7 house owner had admitted the deceased in the hospital. He further stated that at about 9.00 p.m. he went to S.R. Nagar Police Station and gave Ex.P-1 complaint and the S.I. instructed him that the police will come to hospital and asked him to go to the hospital and that the police reached Mytri hospital before he reached the hospital. The evidence of PW-1 further discloses that the police referred the dead body to Gandhi hospital mortuary and on 4.9.2000 the post mortem examination was held. Before the post mortem examination, at about 1.30 p.m., the Mandal Revenue Officer came to the mortuary and held inquest over the dead body of the deceased and during the course of inquest panchanama, the Mandal Revenue Officer recorded the sworn statements of himself and his wife. On 4.9.2000 at about 4.00 p.m. he again went to the Police Station and his wife and other relatives went to the Police Station and at that time police examined him and recorded his statement. The dead body was handed over to him after the post mortem examination and he performed the last rites of the deceased.

14. Thus, it can be seen from the evidence of PW-1 that on 3.9.2000 it is the brother of the accused Seshagiri Rao who informed him through telephone that his daughter was admitted in Mytri hospital due to ill-health and not the accused. It is commonly expected of a husband when his wife is admitted in the hospital and is in a serious condition to inform about the same personally to her close

relatives like parents, which is conspicuously absent in this case. Another factor to be seen is that when his wife was admitted in the hospital in a serious condition, his presence at the hospital and his enquires with the doctors would be normally expected. But, in this case, the evidence of PW-1 discloses that at about 8.30 p.m., doctors called him inside the room where his deceased daughter was undergoing treatment and informed him about the death of his daughter. Thus, the accused has not shown the natural tendency of knowing the condition of his wife. It is to be further seen from the evidence of PW-1 that until PW-1 enquired with the accused, the accused has not spoken anything and even when PW-1 enquired with him, he only stated that he was in the Institute and therefore he does not know what had happened to the deceased. The evidence of PW-1 further discloses that he alone went to the police station to lodge complaint. When the accused did not actually know as to how his wife died and the death remained a mystery, it is commonly expected of a husband to lodge complaint before the police to know as to how the death occurred, which also he did not do. Even on 4.9.2000 when the post mortem examination was held, the accused was not present. This aspect of the matter is clear in view of the statement of PW-1 that during the course of inquest panchanama the Mandal Revenue Officer recorded the sworn statements of himself and his wife and even PW-11 Mandal Revenue Officer who conducted inquest panchanama did not speak anything about the presence of the accused at the time of conducting inquest panchanama.

15. The Court below simply disbelieved the evidence of PW-1 stating that so many facts have been elicited in the cross-examination of PW-1 which he has failed to mention in his 161 Cr.P.C. statement or in his complaint Ex.P-1. It is strange that simply because PW-1 has not stated the facts which were elicited when he was cross-examined the Court below did not consider the other part of his evidence which inspires confidence of the Court. In the cross-examination, the defence would put so many suggestions and when a suggestion is put, naturally the witness has to deny or admit the same. The facts which have been elicited during the cross-examination of PW-1 are in no way helpful to the defence nor would they draw any adverse inference to discredit the testimony of PW-1. The conduct of PW-1 in not even mentioning the name of the accused while presenting Ex.P-1 shows that he, in no way, wanted to implicate the accused without discovering or knowing the true facts. In Ex.P-1 he only stated that on 3.9.2000 he received a telephone call from M. Seshagiri Rao (brother of the accused) from Hyderabad asking all of them to come down to Hyderabad immediately as their daughter is in danger. He further stated in Ex.P-1 that they started at 8 o'clock and visited Mytri Hospital where their daughter was in unconscious state. After half-an-hour, the doctors have declared their daughter dead. He further stated that his daughter was in good health and they came to know that she was in good health till 4 p.m. on 2.9.2000 and after completing her household works, she became unconscious at 6 p.m. He further stated in Ex.P-1 that he does not know how this happened and requested for taking

necessary action and to see that her dead body is handed over for last rites.

16. Thus, nowhere in Ex.P-1 he tried to take the name of the accused without knowing the true facts and it is only when the inquest was held over the dead body of the deceased and it was found that the death of the deceased was due to poisoning, doubt has arisen on the accused. Simply because PW-1 has not stated in the 161 Cr.P.C. statement or in Ex.P-1 that when they came to Hyderabad on 3.9.2000 they slept at the house of his son on that night or that on 4.9.2000 they went to Gandhi hospital mortuary at about 8.30 a.m. or that on 3.9.2000 after the death of the deceased in the hospital his wife and children went to the house of the accused and came back to the hospital, his evidence which inspires the confidence of the Court cannot be eschewed and the said suggestions, in no way, help the case of the accused.

17. It was further suggested to PW-1 in the cross-examination that his deceased daughter felt that she was humiliated in his house because of not extending invitation to the accused and committed suicide due to severe spondilitis and headache. The said suggestion was denied by PW-1. Even if the case of the defence is to be admitted, absolutely no evidence, either oral or documentary, is adduced by the defence to show that the deceased was suffering from such spondilitis or headache. When the deceased was suffering from such spondilitis or headache and that was so severe as to drive her to commit suicide as alleged by the defence, she would have treatment for the same, but no single piece of evidence to show that she had taken treatment for spondilitis or headache is placed on record. In the absence of any evidence available, the case of the defence that the deceased committed suicide because of such spondilitis and headache cannot be believed.

18. Another suggestion was put to PW-1 that his second son's wife committed suicide after three months' delivery and his second son has got handicapped son and the deceased was affectionate towards his handicapped grandson and used to worry about the health of his handicapped grandson. The Court below took it as one of the grounds to disbelieve the case of the prosecution. It is not understandable as to how it would affect the case of the prosecution. Even though PW-1 admitted the said suggestion, it would lead to the conclusion that the deceased cannot commit suicide as she was affectionate towards the grandson of PW-1 and was worried about his health. The grandson of PW-1 already lost his mother and being a person concerned about his health, the deceased would only be thinking how to bring him up but not to commit suicide. Thus, we are of the considered view that nothing has been elicited by the defence not to place reliance on the evidence of PW-1.

19. Coming to the evidence of PW-2, he too deposed about the incident in the same manner as that of PW-1. His evidence is also consistent with the evidence of PW-1 as to receiving telephonic message on 3.9.2000 from the brother of the accused stating that the deceased was admitted in Mytri hospital due to ill-health and as to their proceeding to Hyderabad and finding the deceased in unconscious

state of mind. His evidence further reveals that on questioning, the accused did not give proper explanation and he was in confused state of mind. PW-2 further stated that when his father (PW-1) went to S.R. Nagar Police Station after the death of the deceased for lodging complaint keeping him and his mother in the hospital, the accused escaped from the hospital. He further stated that he was present at the time of inquest panchanama by MRO on 4.9.2000 and that after post mortem examination the dead body was handed over to them for cremation and that they suspected that the deceased was administered with poison. On 7.9.2000 himself, B.N. Chari (PW-10), Satyanarayana, his elder brother went to S.R. Nagar Police Station in the evening hours and at that time police recorded their statements. PW-2 further deposed that on 7.9.2000 the accused was in the custody of police when they went to the police station and on their enquiry the accused informed them that he had mixed cyanide poison in Limca cool drink and administered it to the deceased. PW-10 B.N. Chari also corroborated the said fact by stating that the accused stated before them that he mixed cyanide in Limca cool drink and administered to the deceased.

20. It is true that PW-2 has stated during the cross-examination that his father used to go to Police Station daily from 3.9.2000 to 7.9.2000 and that his father used to inform them as to what transpired in the police station between himself and the police. But, this fact would in no way affect the case of the prosecution. Even if it is to be admitted that PW-1 went to the police station daily from 3.9.2000 to 7.9.2000, being the father of the deceased there was nothing wrong for him to go to the police station to know about the progress in the case as to the cause of the death of his daughter. In the same way, it is but natural for any father to disclose as to what transpired in the police station to share with his family members. The observation of the Court below is that the said version is contrary to the evidence of PW-1 because he stated that he went to the police station only on 7.9.2000 when he was summoned by the police. Even if it is to be admitted that there is a contradiction on this point, it would not affect the case of the prosecution for the reason that it is not brought out by the defence that by attending the police station daily from 3.9.2000 to 7.9.2000 PW-1 has influenced the police in any manner to implicate the accused. Had it been the intention of PW-1 to implicate the accused in the case, as stated above, in Ex.P-1 itself he would have named the accused as responsible for the cause of the death of his daughter. Therefore, no much importance can be given to the above minor contradiction.

21. The Court below placed reliance on the statement made by PW-2 in his cross-examination admitting that on 4.9.2000 PW-1 and the accused went to the police station from Gandhi Hospital mortuary and that the accused was detained in the police station since 4.9.2000 and held that therefore the case of the prosecution that the accused was arrested on 7.9.2000 cannot be believed. Firstly, it is to be seen that PW-2 did not accompany PW-1 to the police station and therefore how he came to know that PW-1 and the accused both went to the police station from Gandhi hospital mortuary is not elicited by the defence. PW-2

did not say that either PW-1 or the accused informed that both of them together are going to police station. Secondly, no suggestion was put to PW-1 by the defence that PW-1 and the accused both went to the police station from Gandhi hospital mortuary and that the accused was detained in the police station since 4.9.2000, more particularly when the case of the defence is that PW-1 and the accused went to the police station from Gandhi hospital mortuary. More over, the evidence of PW-2 is that it is only on 7.9.2000 he went to police station along with PW-10 and others and found the accused in the custody of the police on 7.9.2000. In that event, the admission of PW-2 that the accused was detained in the police station since 4.9.2000 cannot be believed. When the case of the defence is that PW-1 was daily visiting the police station, for that matter, he would be knowing whether the accused was detained in the police station since 4.9.2000, but apparently no suggestion was put to PW-1 to elicit whether the accused was detained in the police station since 4.9.2000. Therefore, we are of the considered view that the Court below erred in placing on the statement of PW-2 that the accused was detained in the police station since 4.9.2000, more so, when the said fact was not corroborated through the evidence of PW-1. The Court below further observed "It is also a fact as admitted by PW-2 that the accused was very much present at the time of conducting inquest over the dead body of the deceased". A careful perusal of the evidence of PW-2 did not disclose anything as to PW-2 admitting that the accused was very much present at the time of conducting inquest over the dead body of the deceased. Therefore, we are at a loss to understand how the Court below gave the said finding in the absence of any admission by PW-2 that the accused was present at the time of conducting inquest over the dead body of the deceased. Not only PW-2 but either PW-1 who was present at the time of conducting inquest or PW-10 who conducted inquest also did not speak anything as to the presence of the accused at the time of conducting inquest over the dead body of the deceased.

22. PW-3 is another circumstantial witness in this case. Her evidence supports the case of the prosecution that she and the house owner (PW-6) shifted the deceased to the hospital when they found the deceased in unconscious state. Her evidence goes to show that she was working as maid servant in the house of the accused for one year prior to the date of incident. The deceased and the accused were alone residing in the house. The younger brother of the accused Seshagiri Rao used to come to the house of the accused frequently and used to stay in the house of the accused. PW-3 further stated that on the date of incident as usually she went to the house of the accused at 5.00 p.m. and after attending the work she came back to her house. Half an hour thereafter, the landlady Saroja (PW-6) came to her house and took her to the house of the accused informing her that the deceased was not in a position to talk. Both of them went to the portion of the accused and saw the deceased lying in the chair in unconscious state and shifted the deceased to Mytri hospital for treatment. PW-3 further deposed that when they shifted the deceased to hospital, the accused was not in the house and he came to the hospital one hour after the deceased was admitted in the

hospital.

23. Though PW-3 was cross-examined by the defence, nothing was elicited by the defence which would affect the case of the prosecution. However, she stated that the deceased was suffering from nervous disease. But, as already stated above, no evidence is available to come to the conclusion that the deceased was suffering from any ailment.

24. PW-4 is the person who, according to the prosecution, gave Cyanide to the accused when the accused approached him and asked for providing Cyanide on the ground that it is required for cleaning the computer parts. He was declared hostile by the prosecution. No explanation is forthcoming for not marking the statement of PW-4 before the Magistrate u/s 164 Cr.P.C, Even though the learned senior counsel contended that the statement of PW-4 u/s 164 Cr.P.C, is not marked as an exhibit and PW-4 turned hostile and the same would give rise to doubt the case of the prosecution, this Court is not in agreement with the said contention. Merely because the 164 Cr.P.C, statement of PW-4 is not marked as an exhibit and he turned hostile, it cannot go in favour of the accused as the appellate Court has to look into other factors which link up the chain of circumstances.

25. PW-5 is the Surgeon working in Mytri Hospital. His evidence links the chain of circumstances to the effect that on 2.9.2000 at about 7.50 p.m. the deceased Laxmi Kumari was brought to Mytri hospital in unconscious state by her neighbour (PW-7). He further stated that immediately she was taken to Intensive Care Unit and was put on ventilator. While she was on ventilator, she developed cardiac arrest. Cardiac resuscitation was done and she responded to cardiac resuscitation. On 3.9.2000 she developed another cardiac arrest at about 7.30 p.m. and again they gave her resuscitation. They could not revive her heart beating. Police visited the hospital and shifted the dead body to mortuary. He further deposed that he cannot say why the deceased developed cardiac arrest and post mortem examination is necessary to know the cause of death. Ex.P-3 is the death summary issued by him. Ex.P-4 is the M.L.C. No. 103 maintained by their hospital.

26. Basing on the evidence of PW-5, the Court below observed that PW-5 doctor did not see any symptoms of poison when the deceased was admitted in the hospital and on the other hand he stated that the deceased had developed cardiac arrest. Thus, the Court below took the same as one of the grounds to disbelieve the case of the prosecution. But, it has to be noted that PW-5 himself stated in his evidence that he cannot say why the deceased developed cardiac arrest and post mortem examination is necessary to know the cause of death. Thus, unless the post mortem examination is conducted, the cause of the death cannot be said due to cardiac arrest. Here, it is pertinent to refer to a decision of the Supreme Court in *State, Govt. of NCT of Delhi v. Sunil and Anr.* (2001) 1 SCC 652 wherein it is held:

Apparently the doctor was not disposed to conduct a detailed examination on the dead body either because he was pretty sure that the body would be subjected to a detailed autopsy or because the doctor himself was in a great hurry. Whatever be the reason, no court could afford to ignore the report of the doctor who conducted the autopsy with meticulous precision about all the features noticed, merely on the strength of what another doctor had scribbled in the MLC at the initial stage.

27. Ex.P-12 is the post mortem examination report issued by PW-14 wherein opinion as to the cause of death was reserved pending the report of the Director of Forensic Science Laboratory. Exs.P-15 and P-16 are the forensic science laboratory reports with regard to visra and examination of limca bottle respectively. Based on the report of the Director of FSL, PW-14 issued Ex.P-13 final opinion stating that the death of the deceased was due to cyanide poisoning. The observation of the Court below that no symptoms of poisoning the deceased were detected by PW-5 is baseless because Ex.P-4 Medico Legal Record issued by PW-5 reveals that the deceased was found unconscious and there was frothing from the mouth. On general examination of the patient, it was found that pupils mild, dilated, non-reacting; pulse nil, B.P. nil, respiratory rate nil. Even during the post mortem examination report under Ex.P-12, it is stated that conjunctiva congested froth present on the mouth and nostrils. Therefore, it cannot be said that there were no symptoms of poisoning when the deceased was admitted in the hospital. The Court below grossly erred in relying on the evidence of PW-5 in acquitting the accused as he did not find any symptoms of cyanide poison. But, however, the evidence of PW-5, though he is a doctor, cannot be made as one of the grounds for rejecting the case of the prosecution for the reason that even though PW-5 is a doctor, he did not make any attempt to know the cause for the unconsciousness of the deceased. Secondly, when froth was coming from her mouth, he did not make any attempt to know whether it was due to any poison. There is no evidence to the effect that PW-5 has taken any care to examine the deceased on those aspects. In the absence of the same, his evidence cannot be one of the grounds for acquittal.

28. PW-6 is the shop owner from where the accused is alleged to have purchased Limca bottle. He stated that he is a resident of Yellareddiguda and running a General Store "Gopichand General Stores" at Yellareddiguda and he knows the accused who is residing at Yellareddiguda. He categorically deposed that about more than one year back the accused came to his shop and purchased one Limca bottle at about 2.30 or 3.00 p.m. He asked the accused to deposit Rs. 5/- towards empty bottle. After purchasing the Limca, the accused paid Rs. 15/- to him and took away the Limca cool drink and the accused did not return the empty bottle. The categorical deposition of PW-6 that he sold Limca bottle to the accused and he did not return the bottle lends support to the case of the prosecution that the accused used the Limca bottle to mix cyanide in it.

29. The contention of the learned senior counsel for the respondent - accused is

that PW-6 is a social worker and a reputed person in the locality as admitted by him in the cross-examination and he said during the cross-examination that he cannot say how many Limca bottles were sold on 2.9.2000 and also the persons to whom he had sold the Limca and therefore his evidence cannot be believed. Here, it has to be noted that there is no enmity between accused and PW-6 and simply because he is a social worker or a reputed person, it does not give rise to doubt his evidence. There is a marked difference between the accused and the other persons to whom he sold the Limca on that day in that the accused took away the bottle also by depositing Rs. 5/- for the bottle. Normally, the persons who took the cool drink bottles to their residences would deposit some amount and when they return the bottle, the said amount would be returned and the shop owners would remember the persons who have taken away the cool drink bottles by depositing amount. This would have made PW-6 to remember the accused, more so when PW-6 knew the accused. PW-6 stated during the cross-examination that in the first week of September, 2000 one S.I. namely Prasanna Kumar brought the accused to his shop and enquired him whether the accused purchased Limca bottle from his shop. As the accused did not return the bottle and he was brought by the police within a gap of a week and as PW-6 already knows the accused, PW-6 informed the S.I. that the accused has purchased Limca bottle from him. Thus, there is nothing to disbelieve the evidence of PW-6.

30. PW-7 is the house owner and she deposed that the accused and the deceased were tenants in her house for the last one year prior to the date of incident. She further stated that about three years back the incident took place. At about 5.00 or 5.15 p.m. she received a phone call to the deceased. Then she went to the portion of the accused and pressed the calling bell and there was no response. Then she peeped through the window and saw the deceased sitting in a chair. As she did not respond to the calling bell, she called PW-3 and both of them shifted the deceased to Mytri hospital. Thus, both PW-3 and PW-7 categorically deposed that they shifted the deceased to the hospital when they found her in unconscious state.

31. PW-8 is the panch witness for Ex.P-5 scene of offence panchanama and Ex.P-6 rough sketch. His evidence goes to show that about three years back at about 10.45 p.m. himself and his friend Yadagiri were returning to S.R. Nagar via Yellareddyguda. At Yellareddiguda one constable stopped them and informed that S.I. was calling them. Then they went to a house and there the S.I. was standing and asked them to help him in the panchanama and took them to hall, kitchen and bed room of the house. They saw plastic chairs, sofa and computer in hall. Police drafted panchanama and read over the contents to them and then they attested the panchanama. He identified Ex.P-5 as the scene of offence panchanama and Ex.P-6 as the rough sketch. The defence did not choose to cross-examine PW-8 and therefore his evidence remained uncontroverted.

32. PW-9 is the panch witness for the inquest panchanama and she deposed that on 4.9.2000 at about 1.00 p.m. the Mandal Revenue Officer held inquest over

the dead body of the deceased in her presence and in the presence of one Krishna and they attested the inquest panchanama. She further deposed that the MRO recorded the sworn statements of the parents of the deceased and after recording the statements of the parents of the deceased, the mediators came to the conclusion that the accused might have done something to the deceased and that the deceased died under suspicious circumstances and that the same is mentioned in Col.No. 15 of the inquest. She admitted that Ex.P-7 is the inquest panchanama and it bears her signature. She denied the suggestion that she does not know what is written in Ex.P-7 panchanama and that inquest panchanama was not conducted in her presence and that she attested Ex.P-7 when she went to Gandhi Hospital.

33. PW-10 is the person, who according to the prosecution acted as mediator for the marriage of the deceased with the accused. He stated that himself and one M. Satyanarayana were the mediators of the marriage of the deceased with the accused. His evidence also goes to show that on 4.9.2000 the maternal uncle of PW-1 telephoned and informed her that the deceased was hospitalized and immediately they started to Hyderabad and on 5.9.2000 in the morning hours they reached Hyderabad. He telephoned to the house of eldest son of PW-1 who is residing at Moulali who in turn informed him that the deceased died on 3.9.2000 at the hospital and the dead body was kept at Gandhi hospital mortuary. On that information they proceeded to Gandhi hospital and saw the dead body of the deceased. It is the further evidence of PW-10 that on 7.9.2000 they went to the police station and they saw the accused in the police station and the brother of the accused Seshagiri was also present in the police station. Himself and M. Satyanarayana enquired the accused as to how the incident occurred. The accused informed them that the deceased died and that the accused further informed them that the deceased consumed Limca or Thump Up and died. At that stage, the learned Additional Public Prosecutor declared the witness hostile as he partly retracted the contents of 161 Cr.P.C, statement. However, when he was cross- examined by the Additional Public Prosecutor, he admitted that the accused has stated before them that he mixed cyanide in Limca cool drink and administered it to the deceased and that he had stated the same fact in his 161 Cr.P.C, statement. He also admitted that he stated in his 161 Cr.P.C. statement that the accused informed him that the deceased insisted him to take her to USA along with him. When PW-10 was cross-examined by the defence, it was suggested to him by the defence that the accused did not state before them that he has mixed poison in Limca cool drink and administered it to the deceased and that he was deposing falsely at the instance of PW-1 and police, but PW-10 denied the same. It is also to be noted here that PW-10 did not say that police were present when the accused informed them that he mixed cyanide in Limca cool drink and administered it to the deceased. Therefore, his evidence assumes importance and supports the case of the prosecution.

34. PW-11 is the Mandal Revenue Officer and it is his evidence that on 4.9.2000 at about 1.00 p.m. he secured the presence of PW-9 and another and conducted

inquest over the dead body and at the time of inquest panchanama he examined and recorded the sworn statements of PW-1 and his wife and that the mediators opined that the deceased died under suspicious circumstances. He further stated that Ex.P-7 is the inquest panchanama which bears his signature. Except suggesting that after post mortem examination he prepared Ex.P-7 at the police station, nothing was elicited by the defence to discredit his evidence.

35. PW-12 is the panch witness for the confessional panchanama and he was declared hostile by the prosecution. Therefore, it is contended by the learned senior counsel for the respondent that the confessional and seizure panchanama remain not proved and therefore the alleged recovery of M.O-1 Limca bottle in pursuance of the confession said to have been made by the accused cannot be believed. But, we are not in agreement with the said contention. Though PW-12 turned hostile, during the cross-examination he stated that Exs.P-9 and P-10 are the signatures of the witnesses on confessional panchanama. Thus, he admitted his signature Ex.P-9 on the confessional panchanama. In this context, contending that though PW-12 turned hostile it would not affect the case of the prosecution the learned Public Prosecutor has drawn attention of this Court to a decision of the Supreme Court in *Surender Singh Vs. State of Haryana*, , the relevant portion of which reads as follows:

With regard to PWs 3 and 4 panch witnesses being turned hostile, this contention was also well considered by the trial Court and the High Court. And both the Courts held that their statements do not affect materially the prosecution story. PW-3 stated that pistol or catridges or currency notes mentioned in Ext. PC were not recovered in his presence. He, however, admitted his signatures over Ext. PC and Ext. PD. PW-4 also stated that the pistol, catridges or currency notes mentioned in Exs.PC were not recovered in his presence. He also admitted that Ext. PC and Ext. PD bear his signatures. Therefore, both the Courts correctly held that Ext.PC and Ext.PD were recovered in the presence of PWs 3 and 4 who were panch witnesses.

36. In *State, Govt. of NCT of Delhi* (referred (1) supra), the Supreme Court held:

There is no requirement either u/s 27 of the Evidence Act or u/s 161 Cr.P.C, to obtain signature of independent witness on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is case on the police officer when searches are made under Chapter VII of the Code. A search is made to find out a thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the

rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.

Hence, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

37. In the above case, the apex Court further held:

It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the Court to believe the version to be correct if it is not otherwise shown to be unreliable.

38. The above decisions, in our considered view, are very much relevant to the case on hand. This is also a similar case where PW-12, though turned hostile, admitted his signature on the confessional panchanama. Therefore, it has to be held that the recovery cannot be disbelieved simply because PW-12 turned hostile. Apart from that, PW-18 Investigation Officer also categorically deposed that Ex.P-7 is the admissible portion of confession of accused which led to Ex.P-18 seizure panchanama of M.O-1 Limca bottle. There is no rule or principle to hold that the evidence of Investigating Officer cannot be relied upon unless it is corroborated, as held by the Supreme Court in *Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another*, . Therefore, Ex.P17 admissible portion of confession of the accused, which led to recovery of M.O-1 bottle is relevant u/s 27 of the Indian Evidence Act and consequently the recovery of M.O-1 bottle at the instance of the accused stands proved and the same cannot be discarded merely because PW-12 has turned hostile.

39. PW-13 is the S.I. of Police and his evidence is to the effect that on 4.9.2000 he received CD file in this case from S.I. Prasanna Kumar and perused the

statements of PW-1 and his wife recorded by M.R.O. He altered the Section of law from 174 Cr.P.C. to 498-A and 306 IPC. Ex.P-11 is the alteration memo issued by him. Subsequently he handed over the CD file to PW-18 Inspector of Police.

40. PW-14 is the Civil Assistant Surgeon, Gandhi Hospital and he deposed that he conducted autopsy over the dead body of the deceased on 4.9.2000 and found no external injuries. He further stated that on dissection the stomach contained 200 ml of yellowish liquid with a smell of bitter almonds. Mucous was congested. Blood was bright red in colour. The visra was preserved and sent to FSL for examination and report and he reserved his opinion about the cause of death. PW- 14 further stated that on 27.1.2001 he received report from FSL, basing on which he issued his final opinion about the cause of death as cyanide poison. Ex.P-12 is the post mortem examination report issued by him and Ex.P-13 is the final opinion given by him. PW-14 denied the suggestion that Ex.P-13 is totally unscientific report issued by him and that he issued opinion as cyanide poison at the instance of police. It is also elicited from his evidence that he put common salt in all the three bottles before they were sealed, for the purpose of preservation and that by putting common salt in the intestines, the intestines will be preserved for few weeks without decomposition.

41. Though PW-14 stated during the further cross-examination that there is possibility of not getting accurate results if the visra is not kept in cold storage and that from 4.9.2000 to 15.9.2000 the visra was in the custody of the constable to whom he handed over it, it would not affect the case of the prosecution in any way for the reason that PW-14 did not say that there is a definite possibility of not getting accurate results if the visra is not kept in cold storage. More over, he had taken precaution of putting common salt in the bottles for the purpose of preservation. Even otherwise, it is not pointed out by the authorities of FSL that as the visra was not put in cold storage they are unable to get accurate results. Mere possibility cannot become a ground to reject Ex.P-15 Forensic Science Laboratory report with regard to visra forwarded by PW-14, which is based on scientific analysis. Further, though PW-14 stated that the Visra was in the custody of the constable to whom he handed over it, it would not affect the case of the prosecution for the reason that nothing was elicited by the defence that during the period the visra was in the custody of the constable it was tampered in any way. Ex.P-15 FSL report specifically reveals that Forensic Science Laboratory received three screw capped bottles, the mouth of each of which is covered with paper, tied with twine, sealed with one seal, which is in tact and identical with the sample seal, through Sri L. Prasad HC 3175 on 15.9.2000. Ex.P-15 further reveals that the bottles contained 1) stomach and piece of intestine in brownish turbid liquid, 2) pieces of liver and kidney in brownish turbid liquid and 3) reddish turbid liquid. Ex.P-15 further reveals that physical examination and chemical tests were conducted and the above items were analysed and Cyanide a chemical poison was found in all of them.

42. PW-15 is the S.I. of Police, S.R Nagar from May 2000 to November, 2002. His evidence is that on 3.9.2000 at 9.15 p.m. he received Ex.P-1 from PW-1 and registered it as a case in Cr.No. 589 of 2000 u/s 174 Cr.P.C. and issued FIR. Ex.P-14 is the original FIR issued by him. He further stated that he examined and recorded the statement of PW-1 and proceeded to Mytri hospital and shifted the dead body of the deceased to Gandhi Hospital mortuary for the purpose of post mortem examination. At 11.00 p.m. he went to the house of the accused situated at Yellareddiguda and secured the presence of PW-8 and another and conducted scene of offence panchanama under Ex.P-5 and prepared rough sketch under Ex.P-6 and obtained the signatures of the mediators on Exs.P-5 and P-6. He further deposed that he secured the presence of PWs 3 and 7 and recorded their statements. On 4.9.2000 he sent a requisition to RDO Secunderabad to depute MRO to conduct inquest over the dead body of the deceased. He handed over the CD file to PW-13 for further investigation.

43. PW-16 is the S.I. of Police, S.R. Nagar who went to Bhadrachalam and recorded the statement of PW-4. His evidence goes to show that on 29.9.2000 PW-18 instructed him to go to Bhadrachalam for recording the statement of PW-4 and accordingly he proceeded to Bhadrachalam on the same day and reached at mid night. On the next day he went to the shop of PW-4 and recorded the statement of PW-4. PW-16 further deposed that PW-4 stated before him as contained in Ex.P-2. He denied the suggestion that PW-4 has not stated before him as contained in Ex.P-2 and that he brought PW-4 and his brother to Hyderabad and detained them in police station illegally and forced him to give the statement against the accused.

44. PW-17 is the Joint Director, Forensic Science Laboratory. His evidence discloses that the three bottles which were received on 15.9.2000 were subjected to physical examination and chemical tests and cyanide a chemical poison was found in all of them. He further deposed that Assistant Director Suhasini conducted chemical examination and the same was approved by him and the report was forwarded to Professor of Forensic Medicine, Gandhi Medical College, Hyderabad. He also stated that Ex.P-15 is the F.S.L. report with regard to visra forwarded by PW-14 which bears his signature. His evidence further goes to show that on 27.9.2000 he received one cloth parcel sealed with three seals, which are in tact and identical with the sample seal containing one screw capped bottle, the mouth of it covered and tied with guaze, sealed with one seal and the bottle was labbled as "Limca" containing small amount of white powder. He stated that on physical examination and chemical test cyanide a chemical poison was found in it. Ex.P-16 is the FSL report with regard to examination of Limca bottle. It is further elicited from his evidence that cyanide is available in the form of powder which is generally used by goldsmith for cleaning jewellery and also by dhobis.

45. PW-17 further stated that if visra is mixed with common salt dissolved in water, then it would be preserved for more than one year. Thus, the evidence of

PW-17 makes it clear that common salt can be used to preserve the visra. Though he was subjected to lengthy cross-examination, nothing was elicited by the prosecution to discredit his testimony. Though a suggestion was put to him that the quantity of toxicity i.e. quantity of substance will decide whether it is fatal to body or not, which is admitted by him to be true, he stated that 5 to 6 milligrams of cyanide is sufficient to cause death. He further deposed that no liquid was found in Limca bottle and the powder was at the bottom of the bottle. They dissolved the powder in water and took one drop for one test. His evidence further discloses that potassium or sodium cyanide are soluble in water and Limca but not in oils. It is further stated by him that when the cyanide is taken in empty stomach the absorption will be quick and the death will be very fast.

46. PW-18 is the Investigation Officer. His evidence is that on 7.9.2000 he took up the C.D. file from PW-13 and on 7.9.2000 at about 7.00 a.m. he received credible information about the presence of the accused at bill payment office of AP Transco and on that information himself and his staff went to that place and apprehended the accused. He secured PW-12 and another and the accused voluntarily confessed the offence stating that he purchased cyanide from the shop of PW-4 at Bhadrachalam and mixed it in the Limca purchased from the shop of PW-6 and administered the Limca drink to his wife and the accused led them to Yellareddyguda to the house of PW-7 (house owner). PW-18 further stated that the accused voluntarily produced empty Limca bottle from Sajja (low roof). He seized the same under cover of panchanama in the presence of the mediators. Ex.P-17 is the admissible portion of confession of accused and Ex.P-18 is the seizure panchanama of Limca Bottle. He identified M.O-1 as the same bottle which he recovered under Ex.P-18 panchanama. Basing on the confessional statement of the accused he altered the Section of law from 498A and 306 IPC to 302 IPC.

47. Ex.P-19 is the alteration memo filed by him. He also recorded the statements of PWs 2, 5 and 10. He further stated that M.O-1 was referred to FSL along with the Letter of Advice and that he deputed PW-16 to Bhadrachalam to record the statement of PW-4. On his requisition, the statement of PW-4 u/s 164 Cr.P.C. was recorded by the Magistrate. Ex.P-20 is the requisition given by him to the Magistrate to record the statement of PW-4 u/s 164 Cr.P.C. He further stated during the cross-examination that in Ex.P-18 he mentioned that he seized an empty Limca bottle. He further stated that his investigation revealed that the accused has committed murder of the deceased and no case is made out against the accused u/s 498A IPC. He stated that on 8.9.2000 he forwarded M.O-1 along with letter of advice to ACP for onward transmission to FSL and he denied the suggestion that the visra of the deceased was kept in the police station from 4.9.2000 to 15.9.2000. He also denied the suggestion that the accused was apprehended on 4.9.2000 and was illegally detained up to 7.9.2000 and after due deliberations with MLA and other relatives of the deceased, the accused was falsely implicated in the case.

48. From the appreciation of the evidence as above, this Court is of the considered view that the evidence of PWs 1 to 3, 9, 10, 11, 14, 15 and 16 coupled with the documentary evidence Ex.P12, P-13, P-15, P-16 and P-17 clinchingly establish that the death of the deceased was not suicidal and it was homicidal. PW-6 categorically deposed as to the accused purchasing M.O-1 Limca bottle from his shop by depositing Rs. 5/- towards empty bottle. PW-6 further stated that the accused did not return the bottle. In pursuance of Ex.P-17 admissible portion in confessional statement of accused, M.O-1 was recovered from the Sajja of the house of the accused. Cyanide was found in M.O-1 Limca bottle as per the evidence of PW-17 and Ex.P-16. The accused on the date of incident i.e. 2.9.2000 suddenly went away from the house after giving the Limca to his wife by saying that he had some urgent work in the office. The accused, as stated by PW-2, absconded from the hospital when the father of PW-2 went to police station to report the matter leaving PW-2 and his mother at the hospital. The accused conspicuously remained absent at the time of conducting inquest on the dead body of the deceased. Ex.P-15 Forensic Science Laboratory report with regard to visra forwarded by PW-14 clearly discloses that cyanide a chemical poison was found. The deceased is admittedly a village background woman and did not have any access to possess cyanide and it has come in evidence that the cyanide is not easily available in the market. The evidence available on record further discloses that the accused and the deceased alone used to stay in the house and the brother of the accused and the brother of the deceased used to visit the house frequently. It is not the case of the defence that some third persons had at any point of time provided cyanide to the deceased and the same is not even suggested to any of the prosecution witnesses. There is no evidence to accept the case of the defence that the deceased committed suicide because of spondilitis and headache. PWs 3 and 7 categorically stated that they shifted the deceased to the hospital when they found the deceased in unconscious state. It is the brother of the accused, who telephoned to PW-1 on the next day morning and informed that the condition of the deceased was serious and asked to come to Hyderabad but not the accused. PW-4 though retracted his statement u/s 164 Cr.P.C. before the Magistrate, admitted that he is a goldsmith by profession and that he knows the accused for the last 10 years. PW-17 Joint Director, Forensic Science Laboratory stated that cyanide is available in the form of powder which is generally used by goldsmith for cleaning jewellery and also by dhobis. PW-2 specifically stated that on their enquiry the accused informed them that he has mixed cyanide poison in Limca cool drink and administered it to the deceased. Even if it is to be taken that PW-2 being the brother of the deceased deposed against the accused, PW-10 who is in no way inimical to the accused and acted as a mediator for the marriage of the deceased with the accused categorically deposed that the accused stated before them that he mixed cyanide in Limca cool drink and administered it to the deceased. Though PW-4 retracted from the confessional statement made by him u/s 164 Cr.P.C, stating that he gave that statement due to the threat of police and as per the chit handed over to him by the police, no such chit is marked as a piece of evidence on behalf of

the defence and PW-4 did not complain about the alleged threat by the police either during the confessional statement being recorded by the Magistrate or to anybody afterwards.

49. As PW-4 was declared hostile, even though his evidence is ignored, the other circumstances, such as, no evidence is available to the effect that the deceased had accessibility to possess the cyanide; no evidence is available to the effect that any third person had any chance to mix cyanide in the cool drink, that the accused himself has purchased the cooldrink bottle, that the accused did not return the empty bottle; that the empty bottle was recovered at the instance of the accused; that the F.S.L. report Ex.P-16 discloses that M.O-1 bottle did contain cyanide and that it is not a case of suicide complete the chain of circumstances to link the accused with the commission of the offence of murdering his wife. The conduct of the respondent - accused in not informing the parents of the deceased when she was admitted in hospital and was in a serious condition, absconding from the hospital (as deposed by PW-2) when PW-1 started to police station for reporting the matter, remaining absent when the inquest was held on the dead body of the deceased etc., will also add to the circumstances to connect the accused with the commission of the offence of murdering his wife.

50. We are also not convinced with the argument of the learned senior counsel that in case of death due to cyanide poisoning such death would be immediate but PW-5 deposed that the deceased died on the next day at about 8.15 p.m. and therefore the case of the prosecution is unbelievable. It has to be noted that the deceased did not consume cyanide directly and she has taken the soft drink in which cyanide was mixed. PW-17 also admitted that the quantity of substance will decide whether it is fatal to body or not. The death of the deceased would have been somewhat late because of the quantity of cyanide the deceased consumed which was mixed in Limca. Simply because PW-5 declared that the death of the deceased was at 8.15 p.m. on 3.9.2000, it would not efface the finding of the Forensic Science Laboratory under Ex.P-15, which is based on scientific chemical analysis, that cyanide was found in the visra forwarded by PW-14. There is ample evidence to come to the conclusion that the death of the deceased was due to cyanide poisoning.

51. It is also contended by the learned Counsel for the respondent that M.O-1 was not recovered by the police when they conducted Ex.P-5 scene of offence panchanama and therefore the recovery of M.O-1 cannot be believed. But, it has to be seen that M.O-1 was traced from the Sajja (low roof) in pursuance of the confession made by the accused and as the police did not know the cause of death when they have conducted scene of offence panchanama, there is reason for them to observe the articles nearby to the scene of offence and therefore they would not have searched the Sajja. It is only when the accused confessed that he mixed cyanide in the limca bottle and gave it to the deceased and that the said bottle was kept at the Sajja, the said M.O-1 Limca bottle was recovered

at the instance of the accused. Further, if really the deceased had committed suicide by consuming Limca, the said bottle would have been available nearby the place where she fell unconscious, but it was found at the Sajja and except the accused there was no chance for anybody to keep the said bottle at the Sajja. Therefore, it cannot be said that M.O-1 was not recovered at the instance of the accused. While discussing about the powers of the High Court in an appeal from acquittal, the Supreme Court in *Sher Singh and Others Vs. State of Uttar Pradesh*, held:

The powers of the High Court in an appeal from acquittal are in no way different from those in an appeal from a conviction. The high Court can consider the evidence and weigh the probabilities. It can accept the evidence rejected by the lower Court and reject evidence accepted by it, unless the lower Court relied upon its observation of the demeanour of a particular witness. In departing from the conclusions of the lower Court the High Court must pay due attention to the grounds on which the acquittal is based and repel those grounds satisfactorily, bearing in mind always that an accused starts with a presumption of innocence in his favour and this presumption cannot certainly be less strong after the acquittal. If these matters are properly kept in view and the acquittal is reversed, there can be no objection because our criminal jurisdiction empowers the High Court to reverse an acquittal.

52. On a careful scrutiny and appreciation of the evidence available on record, we are thoroughly satisfied that the circumstances from which an inference of guilt is sought to be drawn are cogently and firmly established in this case and the said circumstances, as pointed out above, are of a definite tendency unerringly pointing towards guilt of the accused and that the circumstances, taken cumulatively, formed a chain so complete that there is no escape from the conclusion that within all human probability the murder of the deceased was committed by the accused and none else. We are also satisfied that the circumstantial evidence is so complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and the same is not only consistent with the guilt of the accused but is also inconsistent with his innocence. As far as motive is concerned, the case of the prosecution is that the respondent - accused vexed with the non-cooperative attitude of the deceased and he was disinclined to take her to the U.S.A. but the deceased was insisting him to take her to the U.S.A. PW-10 admitted that the accused informed him that the deceased insisted him to take her to the U.S.A. along with him. It is well settled that adequacy of motive is of little importance as it is seen from the experience of criminal Courts that atrocious crimes are committed for very slight motives and that one cannot see into the mind of another. Though the motive is not clearly established by adducing any direct evidence, as the murder has been established beyond all reasonable doubt and the animosity of the accused towards the deceased can be gathered from the circumstances, we are of the considered view that the accused deserves no sympathy having regard to the nature of the offence committed by him. We are also fortified in our view with a

decision of the Supreme Court in Krishna Pillai Sree Kumar v. State of Kerala 1981 SCC (CrL.) 669 wherein it was held "In any case, it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it".

53. For all the aforesaid reasons, we hold that the Court below did not consider the evidence available on record in proper perspective and that the reasons given by the Court below in arriving at the conclusion that the accused is not guilty of the offence u/s 302 IPC are perverse in nature. The prosecution has established its case against the respondent - accused for the offence punishable u/s 302 IPC beyond all reasonable doubt.

54. In the result, the judgment of acquittal dated 27.10.2004 in S.C. No. 349 of 2001 passed by the Court of I Additional Metropolitan Sessions Judge, Hyderabad is set aside. The respondent - accused is found guilty of the offence punishable u/s 302 IPC and accordingly he is convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/- (Rupees One thousand only) and in default to pay the fine amount, to undergo simple imprisonment for three months. The period of imprisonment, if any, already undergone by the respondent - accused shall be given set off u/s 428 of the Code of Criminal Procedure.

55. The criminal appeal is accordingly allowed.