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**(2003) 03 MAD CK 0166**  
**In the Madras High Court**  
**Case No : Criminal Appeal No. 236 of 2000**

Nagammal

APPELLANT

Vs

The Inspector of Police

RESPONDENT

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**Date of Decision :** 28-03-2003

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2003) CriLJ 4677

**Hon'ble Judges :** R. Balasubramanian, J;N. Dhinakar, J

**Bench :** Division Bench

**Advocate :** A. Sirajudeen, for the Appellant; M.K. Subramanian, Government Advocate (Crl.side), for the Respondent

**Final Decision :** Allowed

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## Judgement

R. Balasubramanian, J.—The appellant in this appeal was tried in S.C. No. 42 of 1999 on the file of Court of Sessions, Perambalur for an offence u/s 302 I.P.C. (two counts). On being found guilty, she stands sentenced to undergo imprisonment for life on each count and the sentences are directed to run concurrently. It is that conviction, which is in challenge in this appeal. Heard the learned counsel on either side. There are two deceased in this case namely, Keppagounder and Karupayee. Karupayee is the mother of Keppagounder. Keppagounder is the husband of the accused. P.W.13 is the son of the accused and Keppagounder. For convenience sake, in this judgment, we will hereinafter refer to both the deceased as D.1 and D.2.

2. The case of the prosecution is that by mixing Nitrite poison in milk, the accused gave the same to D.1 and D.2, who after drinking the same became sick. Out of the two, Keppagounder (D.1) died on the spot. Karupayee (D.2) was taken to the hospital of P.W.4, where he pronounced her dead. Therefore the accused is guilty of the offence of murder on two counts. To substantiate the charge, the prosecution examined P.Ws.1 and 2, to whom D.2 is stated to have given an oral dying declaration at 7.00 a.m. on 17.2.1999 that it is the accused,

who gave the milk and both the deceased after drinking the same became sick. P.W.13 is the son of the accused and D.1 and he had been examined to prove that his mother/the accused gave the milk to both D.1 and D.2, which they drank. P.W.1 is a resident of Nuthapur. D.1 was not liking the way of the accused often going out; staying away for sometime and then coming home. Therefore D.1 was always reprimanding his wife/the accused. D.2 also joined D.1 in that action. This, according to the prosecution appears to have been annoying the accused. At 7.00 a.m. on 17.2.1999, when P.W.1 went to the house of D.2 he found her blabbering. She told him at that time that the accused gave her milk and on drinking it, she had suffered a burning sensation in her stomach and that she is becoming unconscious. She also said that the accused also gave milk to her son namely, D.1. Thereafter D.2 could not even utter any word and she fell down. She also died on the spot. He also found Keppagounder/D.1 in an unconscious state. He brought a Homeopathy Doctor and another Doctor and they advised him to take them to the Government Hospital. On P.W.1 reaching the house of Keppagounder (D.1), P.W.2, P.W.13 and others came. P.W.4, the Doctor pronounced D.1 dead on he being taken before him. Then P.W.1 lodged the information with P.W.9, the Village Administrative Officer, which is Ex.P.1. P.W.2 had also given evidence of hearing the oral dying declaration from D.2 as spoken to by P.W.1. He would also state that he followed P.W.1 to the house of the accused. P.W.3 is the Homeopathy Doctor. He would state that on 17.2.1999 P.Ws.1 and 2 asked him to visit the house of the deceased and on reaching the house, he found Keppagounder (D.1) in a very serious condition and D.2 already dead. He advised them to take both the deceased to the hospital. P.W.4 is the Siddha Medical Practitioner, before whom at 11.00 a.m. on 17.2.1999, two or three persons brought Keppagounder in a tempo van. On examination, he found him dead and accordingly told so. P.W.5 knows the accused as well as the witnesses. He also knows the deceased. He has married the younger sister of D.1. It was almost 2.00 p.m. on the day of the occurrence, when the dead bodies were brought to the Village. To protect the interest of the minor son of D.1 and the accused namely, P.W.13, Ex.P.2, the settlement deed was brought into existence. P.W.6 is the Sub-Registrar, in whose office Ex.P.2 had come to be registered. P.W.7 turned hostile. His evidence recorded till he was treated as hostile is of no use either to the State or to the accused. P.W.8 examined to prove that the accused was working under him and in that course she had a chance of acquiring the poison concerned namely, Nitrite, turned hostile. His evidence also is of no use to either side. P.W.13 is the son of the accused and D.1. He would state that at 7.00 a.m. on the date of occurrence when he was in the house, D.1 and D.2 were also there. At that time his mother (the accused) boiled the milk and gave it to his father and grand-mother. On drinking the same, his grand-mother died on the spot and his father became unconscious. Milk was given to his father and grand-mother in M.O.1 series tumblers.

3. P.W.9 is the Village Administrative Officer. When he was in the office on 17.2.1999, P.W.1 appeared before him and narrated the complaint, which he

reduced into writing. Ex.P.1 is the said complaint. Along with his report Ex.P.3, he sent it to the investigating police station. P.W.21 is the investigating officer in this case. At 11.30 p.m. on 17.2.1999 he received the report from P.W.9, the Village Administrative Officer and registered Ex.P.1 in his Police Station Crime No. 30 of 1999 for the offence u/s 302 I.P.C. (two counts). He prepared Ex.P.19, the printed First Information Report. He sent the material records to the court as well as to the higher officials. P.W.17 accordingly collected the records and went to the court at Perambalur after midnight on 17.2.1999. Finding that the Judicial Magistrate was not there, he proceeded to the Court at Ariyalur where he handed over the records to the Judicial Magistrate. P.W.21 continued the investigation by reaching the scene of occurrence at 02.00 hours on 18.2.1999. In the presence of P.W.10 and another he prepared Ex.P.4, the Observation Mahazar. From the scene of occurrence he recovered M.O.1 series (two stainless steel tumblers) under Ex.P.5 attested by the same witnesses. Ex.P.20 is the rough sketch prepared by him. From 3.30 a.m. till 6.00 a.m. on that morning, he conducted inquest over the dead body of D.1 and prepared Ex.P.21, the inquest report. Between 6.00 a.m. and 8.00 a.m. on that day, he conducted inquest over the dead body of D.2 and prepared Ex.P.22, the inquest report. Through P.W.19, the police constable he sent the dead body of D.1 with a requisition for post-mortem. Likewise he sent the dead body of D.2 through P.W.18, the police constable for post-mortem with a requisition in regard thereto. He examined P.Ws.1,2,3,5,9,10,13,17,18 and 19 and recorded their statements.

4. P.W.19 accompanied the dead body of D.1 and he was present throughout post-mortem. After post-mortem he removed M.Os.5 and 6 from the dead body under Form 95 (Ex.P.18) and handed over the same to the investigating officer. P.W.18 was present throughout post-mortem on the dead body of D.2. After post-mortem, he removed M.Os.3 and 4 from the dead body and handed over the same under form 95 (Ex.P.17) to the investigating officer. P.W.15 is the Doctor, who did post-mortem on the dead body of D.1. He commenced post-mortem at 12.40 p.m. on 18.2.1999. Ex.P.10 is the post-mortem report issued by him. The Doctor is of the opinion that the deceased would appear to have died of cerebral hypoxia following Nitrite poisoning around 28 to 36 hours prior to autopsy. The symptoms noted by the Doctor are as follows :

"Appearances found at post-mortem A moderately nourished body of a male lies on the back.

Eyes are closed - Mouth closed.

No external injuries are found

All internal organs are pale.

(1) Stomach - contains 250 ml. (2) Lungs - 350 gms. (3) Liver - 800 gm. (4) Heart - 25 gm. Chambers are empty. (5) Spleen - 250 gm. (6) Kidney - 850 gm. (7) Brain - 1200 gm. (8) Intestine - Pale. (1) Stomach & Contents (2) Liver (3) Kidney (4) Small Intestine (5) preserved.

All have been sent for chemical analysis.

Opinion as to cause of death:-

(a) Reserved pending report of the Chemical Analysis of viscera sent with.

(b) The deceased would have died about 22-26 hours prior to post-mortem examination."

Ex.P.11 is the report on the viscera of D.1. The findings in the viscera report are as follows:

"1. Stomach and Contents : Detected Nitrite.

2. A piece of intestine and Contents: Did not detect Nitrite.

3. A piece of liver : Did not detect Nitrite.

4. Kidney: Did not detect Nitrite.

5. Preservative : Did not detect Nitrite."

P.W.14 is the Doctor, who did post-mortem on the dead body of D.2 at 12.35 p.m. on 18.2.1999. Ex.P.8 is the post-mortem report. The Doctor is of the opinion that the deceased would appear to have died of cerebral hypoxia following Nitrite poisoning around 28 to 36 hours prior to autopsy. The symptoms noted by the Doctor are as follows:-

" Eyes partially opened; Mouth opened; No froth; Skull: NO external injuries, No fracture, No brain injury, No intracerebral haemorrhage; Neck: Hyoid bone intact; No external neck injury. Thorax: Lungs - Pale; No hemothorax; No pneumothorax. Heart: Pale - Chambers empty; No rib fracture. Abdomen: Stomach - contain 200 ml of cruddy white colored fluid; Kidney pale, Spleen pale; Uterus - atrophic; Specimen of saturated solution of common salt, Liver, Stomach, Kidney, intestine sent for Viscera analysis.

Opinion as to cause of death:

(a) Reserved pending report of Viscera Analysis.

(b) The deceased would appear to have died of ?."

Ex.P.9 is the report on the viscera of D.2. The findings in the viscera report are as follows:-

"1. Stomach and contents : Detected Nitrite.

2. A piece of intestine and contents : Did not detect Nitrite.

3. A piece of liver : Did not detect Nitrite.

4. Kidney : Did not detect Nitrite.

5. Preservative : Did not detect Nitrite."

5. P.W.21 continued the investigation. At 2.00 p.m. on 19.2.1999, P.W.11, the Village Administrative Officer appeared before him and surrendered the accused. He also produced a statement given by Nagammal (the accused) before him (The learned Judge, when the said statement was attempted to be marked through P.W.11 rejected it on the ground that since investigation had already commenced, the recording of the extra-judicial confession stated to have been given by the accused before P.W.11 is inadmissible in evidence). Immediately, P.W.21 arrested the accused in the presence of P.W.12 and another. On examination, the accused gave a voluntary confession statement, the admissible portion of which is Ex.P.6. Pursuant to Ex.P.6, the accused led the police and the witnesses to her house and from the roof, produced M.O.2, a white colour packet which was recovered under Ex.P.7 attested by the same witnesses. The accused was sent for judicial remand on 20.2.1999, P.W.21 sent M.Os.1 to 6 to the court under form 95. He also gave requisition Ex.P.12 to the court to subject the viscera of D.1 and D.2 for chemical examination. P.W.15 is the Magisterial Clerk, who speaks about the receipt of the case properties along with requisition Ex.P.12 given by the investigating officer. Accordingly, the case properties were sent to the laboratory as an enclosure to court's letter Ex.P.13. Ex.P.14 is the request given by the investigating officer to send M.Os.1 and 2 for chemical examination and accordingly, they were sent to the laboratory as an enclosure to court's letter Ex.P.15. Ex.P.16 is the Chemical Examiner's report.

6. P.W.20 is the Scientific Expert. She examined M.O.1 series and M.O.2 and gave her report Ex.P.16. In the washings of M.O.1 sodium Nitrite was detected. Examination of M.O.2 also revealed that it is Sodium Nitrite. She also examined the viscera of D.1. Ex.P.11 is the report, which shows that in the Viscera, Nitrite was detected. She also examined the viscera of D.2 and issued Ex.P.9, the report. In that viscera also Nitrite was detected. Nitrite is a poisonous substance. P.W.21 examined further witnesses and completed the investigation. After completing the investigation, he filed the final report in court against the accused on 31.7.1999. When the accused was questioned u/s 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against her, she denied each and every circumstance put up against her as false and contrary to facts. She would state that on the occurrence day when she returned home after supplying Milk to the Society, she found D.2 already lying dead and D.1 in an unconscious state. She would admit that her husband was taken to the Doctor by P.W.1 and others. She admitted that P.W.13 is her son but his evidence is false. Neither documentary nor oral evidence was brought before court at her instance.

7. Having regard to the arguments advanced by the learned counsel on either side we perused the entire materials on record. P.W.15 is the Doctor, who did post-mortem on D.1 and Ex.P.10 is the post-mortem report. Ex.P.11 is the report on the viscera of D.1. P.W.14 is the Doctor, who did post-mortem on the dead body of D.2. Ex.P.8 is the post-mortem report and Ex.P.9 is the report on the viscera of D.2. Nitrite was detected in the stomach contents of both the

deceased. The medical evidence is that the death is due to complications following Nitrite poisoning. Therefore there cannot be any difficulty at all in holding that both the deaths in this case is due to presence of poison called Nitrite in the viscera of both the deceased. It may be noticed here that the poison detected in the stomach contents of both the deceased is Nitrite. The charge against the accused is that by administering Sodium Nitrite poison, both the deceased were done to death. Therefore questions have been asked to both the Doctors, who did post-mortem as well as the Scientific Expert, P.W.20 in the context of the findings rendered that only Nitrite poison was found in the stomach contents of both the deceased, and that Sodium Nitrite poison is different from Nitrite. Evidence has come out on record that whenever the viscera from the dead body is removed, it has to be preserved and one of the preservative is Sodium Chloride. The other preservative is Potassium Chloride. The Doctor had given evidence that normally Sodium Chloride would be the preservative added to the viscera. It has also come out in the evidence of the Doctors and Scientific Expert that if Sodium Chloride is added to the viscera and if Nitrite is detected, in the viscera then it would be called as Sodium Nitrite and if Potassium Chloride is added as a preservative to the viscera and on detection of the Nitrite in the viscera, it would be called as Potassium Nitrite. The medical evidence and the evidence of the Scientific Expert establishes beyond doubt that Nitrite is the poisonous compound. Therefore we do not find any material in favour of the accused in the above context namely, whether Sodium Nitrite is the poison which is the cause for death or whether Nitrite is the poison, which is the cause for death, in as much as the evidence on record establishes beyond doubt that Nitrite alone is the poisonous compound.

8. The case of the prosecution is that it is the accused, who by mixing the said poison in the milk, gave it to both the victims, who after drinking it died. Let us now apply our mind as to whether the prosecution had succeeded in their attempt in establishing it. For sustaining their case, the prosecution relied upon the oral evidence of P.Ws.1 and 2 as the first set of evidence; the evidence of P.W.13 as the evidence of an eye witness (second set of evidence); recovery of M.O.2, the packet containing the poison at the instance of the accused on her arrest (third set of evidence); the recovery of M.O.1 series - two tumblers, which when subjected to chemical examination show the presence of Nitrite (fourth set of evidence) and lastly, the report of the Scientific Expert that the washings of M.O.1 series and M.O.2, show the presence of Nitrite. Let us therefore analyse the prosecution case step by step. We will now take the second set of evidence, namely, the evidence of P.W.13 first for consideration. P.W.13 was aged about 8 years on the date when he gave evidence in court namely, on 2.12.1999. He would also state that at that time he was studying in third standard. The occurrence, according to the prosecution had taken place on 17.2.1999. He would state that he was present in the house at 7.00 a.m. along with his father and grand-mother (D.1 and D.2) and at that time his mother mixed poison in milk and gave it to his father and grand-mother, resulting in the consequences

referred to earlier. He had also categorically stated that milk was given to both in M.O.1 series tumbler. Even at this stage, we are in a position to state that P.W.13 would not have been present in the house at that time at all as claimed by him. The reason is this. P.W.1, claims to be in the house of both the deceased at 7.00 a.m. on the morning of the occurrence. He had spent atleast a couple of minutes or even more there finding the symptoms on D.1 and D.2. His evidence in chief examination would show that on reaching the house of Keppagounder (D.1), P.W.2 and P.W.13 came there. Therefore the presence of P.W.13 in the house, when his mother is shown to have mixed poison in the milk and then giving the same to both the deceased is highly doubtful. Assuming P.W.13 was present in the house for the present, yet, we applied our mind to find out whether his evidence establishes the guilt of the accused. P.W.13, in his evidence in cross examination, would categorically state that when his mother returned from the Society after supplying milk, his father and grand-mother were lying unconscious. He would add by way of next answer that after his mother returned from the Society after supplying milk, she boiled the rest of the milk and added something to it and then gave it to both the deceased. P.W.2 is closely related to D.1. He would state that during the occurrence time in the house of D.1 there were milching cows; the Society work will be over at 6.00 a.m. itself and Nagammal (the accused) had returned from the Society after supplying milk. However, he would deny that when Nagammal returned to the house, both the victims in this case were unconscious. Therefore reading the evidence of P.Ws.2 and 13 together, it is clear to our mind that the accused had left the house in the morning of the occurrence day to supply milk to the Society and was returning home or might have returned.

9. Admittedly P.W.2 was not an inmate of the house of the deceased. Proceeding on the basis that P.W.13 was an inmate at that time, if we accept his evidence as referred to earlier that as his mother returned home after supplying milk to the Society, both his father and grand-mother were unconscious, it will definitely rule out the possibility of the accused mixing poison in milk and then giving it to the deceased. It is no doubt true that this witness would add that his mother boiled the rest of the milk, in which she added poison and gave it to the victims. In this context, we refer to the oral evidence of P.W.21, the investigating officer. In his evidence in cross examination, he would state that during investigation, P.W.13 informed him that his mother poured the rest of the milk in two tumblers and the accused and P.W.13 drank it. Ex.P.4 is the observation mahazar. It shows the presence of only two tumblers namely, a big ever silver tumbler and a small ever silver tumbler in the house. P.W.10 is a witness to Ex.P.4, the observation mahazar and recovery of M.O.1 series - two Stainless Steel Tumblers under Ex.P.5. He would admit in his evidence in cross examination that except M.O.1 series - two tumblers, he did not see anything else in the house. Therefore the materials on record show that only two stainless steel tumblers were available in the house. P.W.13 no doubt stated that the accused gave milk in the two tumblers to D.1 and D.2. It is also his evidence that he and the accused also

drank milk from the tumbler, when the accused filled up the tumblers with the rest of the milk. There is no evidence to show that the tumblers were washed before re-use by P.W.13 and the accused. We have already found that there are no other tumblers in the house. There is nothing on record to show that there would be no trace of Nitrite in the tumblers after they were used by D.1 and D.2. If so the accused and P.W.13 would have had some impact on their system due to the presence of Nitrite in the tumbler. But nothing happened to them. The above materials on the broad aspects would only show that the evidence of P.W.13 that he saw his mother mixing poison in milk and giving it to both the deceased cannot be safely acted upon.

10. P.W.1 would state that at 7.00 a.m. in the morning, when he went to the house of D.1, D.2 gave a oral dying declaration to him, about which we have referred to earlier while narrating the facts. Therefore at 7.00 a.m. on 17.2.1999, he had come to know about the complicity of the accused in the crime. Out of the two, one was found dead at the spot itself. But however, strangely he had chosen to give the complaint for the first time only at 9.30 p.m. on the night before P.W.9, the Village Administrative Officer. P.W.1 did not say that when D.2 gave the oral dying declaration to him, P.W.2 was also by his side. His evidence is that after he reached the house of D.1, P.W.2 and others came. His evidence also shows that after giving the oral dying declaration to him, D.2 fell down unconscious and she was not able to speak thereafter. In Ex.P.1 also there is no mention that D.2 had given any oral dying declaration to P.W.2. The complaint given by P.W.1 before P.W.9 had come to be registered at the police station only at 11.30 p.m. on the night. Ex.P.19, the printed first information report shows that the police station is at a distance of 5 kms from the Village where the occurrence is shown to have taken place. Exs.P.2 and P.19 had reached the court only on 18.2.1999 at 12.00 noon. From a perusal of the evidence of P.W.17, the constable, we find that he had not satisfactorily explained the delay in taking the material records to the court. Therefore there is every possibility of Exs.P.1 and P.19 not coming into existence on the night of 17.2.1999 itself as spoken to by the prosecution now. The delay in lodging the complaint with the police and the delay in sending the material records to the court definitely make it appear as though Ex.P.1 could have brought into existence after much deliberation and therefore the evidence of P.W.1 that D.2 gave the oral dying declaration to him do not impress us at all as a true piece of evidence. For the reasons stated earlier, we are not inclined to believe the oral evidence of P.W.2 that D.2 had given an oral dying declaration to him also.

11. Let us now go into the question of the arrest of the accused. P.W.1 would admit in his evidence in cross examination that on the same night, the police took the accused into custody. P.W.10 had witnessed the preparation of Ex.P.4, the observation mahazar and Ex.P.5, the recovery of M.O.1 series. He would also state that on the night of 17.2.1999 itself the police arrived. Exs.P.4 and P.5 shows that they came to be brought on record at 2.00 and 2.30 a.m on 18.2.1999. Therefore the accused being in police custody from the night of

17.2.1999 stands established by materials on record. If that is the position that could be culled out from the records, then the evidence of the investigating officer namely, P.W.21, that he arrested the accused on 19.2.1999 when produced by P.W.11, the Village Administrative Officer, cannot be easily accepted. Therefore, we have no difficulty at all in holding that there is considerable doubt regarding the time of arrest of the accused, as spoken to by P.W.21, the investigating officer supported by the oral evidence of P.W.11. If the arrest of the accused on 19.2.1999 is doubted on good grounds, then everything which is shown to have followed the said arrest must also fall to the ground. Therefore proceeding on the platform that the arrest of the accused on 19.2.1999 is doubtful, we also hold that the consequential acts namely, examining the accused; recording her confession statement, the admissible portion of which is Ex.P.6 and the further consequential act namely, the recovery of M.O.2-the packet containing poisonous substance under Ex.P.7 also fall to the ground. It may be noticed here that the prosecution examined P.W.8 to show that the accused should have had the poison with her. In as much as he turned hostile and since we have disbelieved the arrest and recovery as referred to above, we have no other go except to hold that the prosecution had not established that the accused was in possession of the poisonous compound, which is shown to have given to both the deceased by mixing it with milk.

12. One other aspect which also attracted our attention is the delay in sending the most crucial incriminating objects namely, M.O.1 series (a big stainless steel tumbler and a small stainless steel tumbler) to the court. According to the prosecution, as spoken to by P.W.13 both these tumblers were used by the accused for pouring milk and mixing poison in it, which both the deceased consumed. As established under Ex.P.5, the recovery Mahazar (M.O.1 series) was at about 2.30 a.m. on 18.2.1999 i.e. after the mid-night of 17.2.1999. Prudence and caution demands that the investigating officer should have sent this important piece of evidence, if really it was incriminating in nature, to the court immediately after such recovery. But a perusal of the records show that these two tumblers were sent to the court for the first time under form 95 only on 12.3.1999 i.e almost nearing a month after the seizure. Separately on the same day M.O.2, the packet containing poisonous compound was also sent. The tumblers, which are shown to have been seized on 18.2.1999, in the absence of any other material to indicate the contra till they were sent to the court on 12.3.1999 should have been only in the police station. Likewise the poisonous compound - M.O.2, since the date of alleged seizure i.e 19.2.1999, should also have been only in police custody till it was also sent to the court on 12.3.1999. There is no evidence to show that at any point earlier to 12.3.1999 M.O.1 series and M.O.2 were even tendered before the court. There is also no evidence before court as to how the tumblers shown to have been seized on 18.2.1999 were safely preserved without the tumblers getting contaminated with any foreign material. If the tumblers are kept exposed to atmosphere, we do not know what are the possibilities of the said tumblers getting contaminated. There is also

nothing on record to show whether M.O.2 was safely preserved in the police station. There is also nothing on record to show that M.O.2 packet was safely sealed and secured so that there would not have been any spillage of powder from the packet. If that is the position and when there is no evidence to show that M.O.2 and M.O.1 series were kept separately away from each other, the possibility of the powder contained in M.O.2 packet getting into contact with the M.O.1 series tumblers, cannot be totally ruled out. Therefore on these possibilities if in the washings of the tumblers Nitrite was detected, it cannot be said positively that the tumblers, when shown to have been used by the accused for giving milk, were contaminated with Nitrite poison. Under these circumstances though the report of the Scientific Expert may show that the washings of the tumblers and M.O.2 packet show the presence of Nitrite and the viscera of the respective accused also show the presence of Nitrite, yet, it cannot be safely said that the presence of Nitrite either in the tumblers or in the viscera of both the deceased was due to the positive act of the accused mixing the said poisonous compound in milk; pouring the same into the two tumblers and then giving it to the respective deceased. We have also referred to in the earlier portion of the judgment the evidence of P.W.13 that the rest of the boiled milk was poured in the two tumblers by the accused, which the accused and P.W.13 had taken. We have also noted that the prosecution had not placed any material to show the presence of any other tumblers in the house in question other than the two tumblers shown to have been recovered. If Nitrite poison had been mixed with milk; the milk having been poured into the two tumblers which was consumed by the deceased resulting in their deaths, then we fail to understand as to how P.W.13 and the accused escaped from all the consequential symptoms which were experienced by both the deceased when the very same tumblers are shown to have been used by P.W.13 and the accused to take milk. Therefore there is definitely an element of doubt in our mind as to whether it could be said conclusively that it is the accused, who mixed the poison in the milk and gave it to both the deceased by using the tumblers in question. When death in a case is shown to have taken place as a result of poisoning, the law is very clear that the accused must shown to be in possession of the said poison with her. Of course, if there is direct evidence regarding the accused administering the poison to the victims, then no further proof is necessary. In this case the direct evidence of P.W.13 had been doubted by us on good grounds. When there is no direct evidence, the prosecution must establish that the accused had the particular poison in her possession, which she administered. This also the prosecution had not established.

13. In the light of our discussion referred to above, though we are pained to note that the person/persons responsible for the two deaths in this case is/are escaping from the clutches of law, yet, unless there is definite legal evidence against the accused, who had been put up for trial, it would not be proper to convict the said person for the said two deaths. Consequently, giving the benefit of doubts expressed by us to the accused, we are inclined to set aside the

judgment under challenge and it is accordingly set aside. The accused stands acquitted and consequently, the appeal would stand allowed.