

(1974) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 40 of 1973

Rama Nand and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-06-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 155, 174
Evidence Act, 1872 — Section 8
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (1974) 3 ILR HP 509

Hon'ble Judges : D.B. Lal, J;C.R. Thakur, J

Bench : Division Bench

Advocate : Inder Singh and Manohar Lal, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—Rama Nand (28 years), Shish Ram (60 years) and Kali Datt (25 years) have appealed to this Court against the decision of the Sessions Judge, Mandi, convicting them of the offences under sections 302 and 201 of the Indian Penal Code. Rama Nand is sentenced u/s 302 for identified the dead body. Under life imprisonment while Shish Ram and Kali Datt are sentenced u/s 201 each for rigorous imprisonment for one year and a fine of Rs. 500.

2. Sumitra (19 years) is the victim of this occurrence. She was wife to Rama Nand and daughter-in-law to Shish Ram accused. The marriage of Sumitra was performed 1 1/2 years before the day she was reported dead. The lady somewhat sophisticated having passed her Higher Secondary Examination and having pursued studies for Prabhakar. It was stated that both Shish Ram and Rama Nand as well as Kali Datt who is younger brother of Rama Nand, were opposed to her serving anywhere or to higher studies being pursued by her. Som Krishan (P.W. 33) is the father of Sumitra. He was in favour of both service and further studies by her. At the time of her marriage, there was prior settlement

with Shish Ram and Rama Nand that Sumitra would be pursuing her studies and would also be seeking employment. Accordingly Sumitra was employed as a school mistress at Chanyana. According to the accused, the service was below their status. The prosecution case was that the accused had threatened Sumitra saying that they were being disrepute on account of her service and that she should give up the service otherwise she would be met with the dire consequences.

3. As Sumitra was serving at Chanyana, which is a village near her parents' house, she used to reside with Som Krishan and casually visited Jherwin--the village of her in-laws. On May 13, 1972, she visited Jherwin where Rama Nand had arrived from Simla being employed as a clerk in the office of the Deputy Commissioner. She stayed with Rama Nand on the night intervening 13th and 14th May, 1972. According to prosecution she became untraceable on 14-5-1972 as she was done away to death by Rama Nand, Shish Ram and Kali Datt and her body was concealed for some time inside the Jungle of Ghanghar and thereafter thrown into the river Sutlej. It was given out by the accused that on the morning of 14-5-1972 Sumitra was planting chilies in the field along with other family members. While it was a little before noon, she went towards the direction of river Sutlej. She was accompanied by Sheela a small girl of 7 years. She pretended that she was going to attend the call of nature. According to the accused she never turned up and when a search was made, her Salwar and shoes were found lying on the bank of the river. Thereafter Shish Ram accused went to the Police Station Karsog and instituted the First Information Report on 16-5-1972 in which he mentioned that Sumitra had committed suicide by jumping into the river. Daulat Ram, Station House Officer (P.W. 38) visited the scene of occurrence on 23-5-1972 and as a result to some investigation conducted by him he was of the opinion that the story of suicide was unbelievable and that Sumitra might have been abducted by some body with intent to murder. Accordingly he advised for a report u/s 364 of the Indian Penal Code.

4. Som Krishan upon receiving the information became at once suspicious that Sumitra was murdered at the instance of Rama Nand and others. Accordingly he reached the spot and interrogated them. The investigating officer recovered the locket chain and watch of Sumitra from the house of the accused Rama Nand. Similarly the clothes of Sumitra which she was wearing when she arrived at the house were also recovered from Rama Nand. A Pranda (cotton head tail) of Sumitra was recovered from the jungle of Ghangar on, 24-8-1972. The hair found entangled in Pranda were compared with another sample of hair found embedded in a Dopatta worn by Sumitra. The forensic examination indicated that the two hair could belong to one and the same person. The investigating officer also recorded the statements of Devku (P.W. 8) and other witnesses who were present on the opposite bank of the river. They had not seen any lady jumping into the river. From this, as well as other circumstances, it was inferred that Sumitra had not committed suicide.

5. After about 20 days of this incident a skeleton was recovered from the same river at a distance of about four kilometres near village Randol. Kali Datt accused was found present near the skeleton in the early hours of the morning of 5-6-1972. He had dragged the skeleton from the river upto some appreciable distance. The dogs had eaten the flesh. A part of the skull was found intact while the remaining was lying at some distance. Som Krishan (P.W. 33) and his brother's wife Laxmi (P.W. 2) were informed. They came and identified the skeleton to be that of Sumitra. They could see a mark on the buttock portion which was due to a burn received by Sumitra during her infancy. One of the teeth found in the mandible was carious, while another tooth was bulging out. From this as well, the witnesses concluded that the skeleton was of Sumitra. The postmortem examination was conducted by Dr. J.K. Sharma (P.W. 14) of the Ripon Hospital. A few components of this skeleton including the mandible were sent to the Dental Surgeon Dr. R.S. Pathania (P.W. 15) and Radiologist Dr. M.L. Ahuja (P.W. 16). They could however find that the mandible belonged to a child of not more than 10 years of age. The components of the skeleton were also sent to Dr. O.P. Bhargawa (P.W. 31) who is professor of Anatomy in the Medical College at Simla. His opinion was also the same regarding age. The doctors could not determine the sex of the skeleton.

6. The defence of the accused was of total denial. It was stated that Sumitra had joined further studies and was serving in a school with their consent. Rather it was Som Krishan who used to threaten the accused with reference to Sumitra and it is he who has implicated them in the offence. The accused adhered to the story of suicide said to be committed by Sumitra in the manner stated by them in the First Information Report lodged by Shish Ram on 16-5-1972. They denied that any body could identify the skeleton. The body was highly putrefied and hence identification was impossible. It was the skeleton of a child and could not be of Sumitra.

7. The prosecution produced 39 witnesses who stated for the motive that the accused had to commit the murder. These witnesses also proved the recoveries made from the house of the accused. They also stated about the identification which was made for the skeleton. The post conduct of the accused was also narrated by them. The part played by Kali Datt at the time of the recovery of the skeleton was also depicted. Similarly the recovery of Pranda from the forest was proved. The doctors were of course produced in the Sessions Court. The entire set of doctors was, however, again summoned in this Court for clarification. The usual police witnesses including Daulat Ram, S.H.O., were examined. The accused also produced 7 witnesses and most of them stated that they had seen Sumitra planting chillies and indirectly referred to her drowning in the river.

8. The learned Sessions Judge believed the prosecution evidence and convicted the three accused in the manner stated above. Kesar Chand who was the fourth accused in the case was, however, acquitted as benefit of doubt was given to him. These accused have felt aggrieved of the decision and have preferred this

appeal.

9. Before advertng to the points of controversy ranged in this Court, it appears appropriate to point out certain facts and circumstances which stand admitted between the parties. There is no dispute that Sumitra came to Jherwin on 13-5-1972 and stayed with Rama Nand. In his statement before the Magistrate, Rama Nand accused admitted that she had come only for one day and was to return back to her father's place on 14-5-1972 as she had to attend the birth-day function to Laxmi's son. It is also admitted by the accused that she was wearing at that time the chain locket (Ex. P. 1) and the watch (Ex. P. 2). According to Rama Nand accused she used to put off these things while going to sleep in the night. Thereafter she used to put them on, the next morning. Similarly it is not denied by the accused that the clothes Shirt, Salwar, Banyan, Dopatta, socks etc. (Exs. P. 5 to P. 10) as well as a basket (Ex. P.11) and umbrella (Ex. P. 12) belonged to Sumitra which she was wearing or holding in her hand at the time she arrived. All these articles were admittedly recovered from the house of the accused. It is of course beyond controversy, that Sumitra resided with Rama Nand on the night between 13 and 14-5-1972. She became untraceable on the next day and the controversy is of course relating to the fact, as to whether she committed suicide by jumping into the river or she was murdered by the accused and her body was concealed some-where. It is again not denied that a corpus which was almost a skeleton was recovered on 5-6-1972 at village Randol. Kali Datt was admittedly present near this skeleton. It is he who dragged it out of the river. In his presence the dogs had eaten the flesh with the result that the parts of the body which could ordinarily enable identification were completely missing, may be due to the eating by the dogs. It is also significantly admitted by the accused Shish Ram that from the month of January, 1972, to the date of recovery of the dead body, no one either adult or child was thrown in the river Sutlej. However, the accused stated that a few children of 8 or 9 years were thrown in the river prior to January, 72, and after June, 1972. It is abundantly clear that one is not concerned with this period for which the accused stated. Rama Nand accused further admitted that he had gone away from the village on 17-5-1972 and returned on 19-5-1972 while according to the prosecution he had gone away on 16-5-1972. It was rather an unusual conduct on the part of a husband whose wife had recently died by drowning in the river. It is also accepted on behalf of the accused that Shish Ram did not take the Salwar (Ex. P. 14) and shoes (Ex. P. 15) to the Police Station on 16-5-1972 when he went there to lodge the First Information Report. It was only on 23-5-1972 that these articles were recovered by the investigating officer.

10. The prosecution had set up a motive for the three accused to have committed the offences. It was pleaded in this Court, rather vehemently, that such a motive was not made out and that could not be a circumstance against the accused. For this the prosecution relied on letters which were exchanged between the accused Rama Nand and his wife Sumitra and also between him and Som Krishan. The first letter Ex. P.A.J. is of 14-10-1971 from Rama Nand to

Sumitra. In this letter the accused clearly mentioned that his father Shish Ram was not in favour of the service to be done by Sumitra. He also mentioned that still Sumitra was insisting for the service. The second letter is of 14-11-1971 (Ex. D.A.) from Som Krishan to Sumitra in which Som Krishan wanted her to return from Simla as she was required for the service in a school. He also mentioned significantly that Rama Nand and others had specifically consented for her to do service. He mentioned that her daughter should not worry and wrote, "whatever God does is good". This shows the heart burning which Sumitra had on account of her in-laws. The third letter is of 13-12-1971 (Ex. P.A.H.) from Rama Nand to Sumitra. This letter is written in somewhat stronger language. The indication is that Rama Nand was very critical of higher studies as well as service undertaken by Sumitra. He mentioned that he was defamed by her. He stated with a taunt that he belonged to poor family while Sumitra was highly educated and had made it a prestige issue but in his own words "I (Rama Nand) was weeping to my fate". He wanted her resignation immediately. He stated that she must reside with him. The indication is that the girl was residing with her parents. Rama Nand could not bear it and was very sour on that account. He even hinted that his life was "a dog's life". He stated that he would not love her and that marriage alliance would be of no use. The following words are also not without significance:

But my soul does not permit you to serve at a monthly pay of Rs. 120. It is against the respect of my family, yourself and myself that I should allow you to serve at a monthly pay of Rs. 120 and only for a tenure of 6 months and myself to stay at Simla in the hotel.

Further on he writes:

So I because of shame I can neither come to my house nor to your house and my living in the world is useless; what should I write further as you yourself are wise.

At another place in the same letter he refers:

If you do not resign the job, our relations will become strained.

The fourth letter is of 16-12-1971 (Ex. P.C) and is again of Rama Nand to Sumitra. This letter is again full of insinuations. He was sorry to write that his life was not being "improved" by Sumitra and that she was not understanding it. He further mentioned that she was causing his end to come and "it would not be better (to him) to live for any more". He asked her, "obey me or not, you yourself will understand the significance of this". Again he lamented that she should not serve at a small salary of Rs. 120 per month. It was rather difficult for him even to talk about it to others and he referred to his "honour" which was deeply affected because of it. He goes on to write: "do not think this letter as a mere piece of paper but each and every line in it will decide our future career". He lamented that Som Krishan was in favour of service. He flew into imagination and quoted Lt. Genl. Kaul who used say that China would not attack the country but ultimately China did attack and the consequences were depressing for the

country. Similarly he hinted that the consequences might be depressing for Sumitra and if she "would not come round" he did not know "what would happen in future". That would be her own responsibility. In this manner the letter decidedly contained a threat to Sumitra. The last letter Ex. P.A.B./I is of 9-5-1972 and in this letter he asked her to visit his house on 12 or 13-5-1972 which was the fateful night for Sumitra. He mentioned that she was deceiving "a true person" and that would be a sin for her. There is an intrinsic ring of hostility in these letters. Rama Nand and others had made a prestige issue. They thought that they were being defamed. They could go to any extent to defend their honour. Sumitra was somewhat adamant in her intentions. Som Krishan was giving her moral support. She was residing with her father. Rama Nand naturally did not like all this. Although no one knows what passed on between the husband and the wife on that night yet the plausible inference is that Rama Nand and others being determined to put an end to all this may have gone to the extent of committing the murder of Sumitra.

11. In this connection another circumstance is pitted against them. One Nameshwar (P.W. 13) came and stated that Rama Nand was enquiring from him about the character of Sumitra. He was told that while Sumitra was unmarried and was residing in a house some one had entered through a window in her bed room. Nameshwar stated that some thieves might have entered after breaking open the iron bars as according to him Sumitra was of good character. Upon that Rama Nand retorted that girls from high altitude were not of good character. Rama Nand was eager to know all this from Nameshwar because the latter at one stage was betrothed to Sumitra although the proposal fell through as their horoscopes never tallied. It is manifest Sumitra was insistent to reside at her parents' house. Rama Nand might have felt jealous because he was reminded of that incident of her school days. The learned Sessions Judge did not believe the statement of Nameshwar for the reasons unknown to this Court. The only statement which Nameshwar made in cross examination was that he informed Som Krishan about that talk which he had with Rama Nand and that he went to the investigating officer out of his own accord. I do not think this circumstance alone was sufficient to impeach the credit of Nameshwar. Thus placing reliance upon Nameshwar in my opinion it could be concluded that these accused and especially Rama Nand were even doubtful of the character of Sumitra. This fact coupled with their objection regarding her service was sufficient motive to commit the crime.

12. The prosecution produced several witnesses to prove that Sumitra was complaining of her maltreatment at the hands of the accused, of threats which were being administered upon her and of criticism which was levelled as she was serving in a school. Her relations were not cordial and they were even suspecting that some untoward incident might not take place involving her, due to all this. The witnesses Kanshi Ram (P.W. 1), Laxmi (P.W. 2), Kamla (P.W. 3), Ram Rattan (P.W. 20), Hira Mani (P.W. 29), Bishweshwar Datt (P.W. 30) and Som Krishan (P.W. 33) need be referred to in this connection. The learned Counsel attempted

to set at naught the testimony of a few of these witnesses by saying that they were relations of the deceased. In my opinion it is the relations alone who could know about the treatment meted out to Sumitra by her husband. Who else could state regarding these family affairs? It can admit of no doubt that relations are not incompetent witnesses. For this reliance can be placed upon *The State of Uttar Pradesh Vs. Samman Dass, and Karnail Singh and Anr. v. State of Punjab* AIR 1954 S.C. 204. Their Lordships have held that in a murder trial the relationship of the prosecution witnesses to the deceased is not a sufficient ground for discrediting their testimony, unless a motive is alleged and proved against them to spare the real assailant and falsely involve another person in his place. The only thing required was some evidence to lend assurance to the veracity of these witnesses. The letters already dealt with are sufficient evidence to lend support to the testimony of these witnesses. The learned Counsel for the Appellants, however, pointed out that the observation of their Lordships is confined to a case where relations are eye witnesses of some event and in that context they have observed that there was nothing intrinsically wrong in believing such witnesses because they were not likely to implicate persons other than the actual assailants. That may be so, but the ratio of the two decisions is decidedly this, that even in other cases, witnesses who are relations, cannot be considered incompetent, and must be believed to be stating truth, provided some other evidence is forthcoming lending support to their version. In the instant case such a support can be had from the letters. I am, therefore, firm in my opinion that these witnesses were rightly believed by the learned Sessions Judge. A very strong motive was thus made out against Rama Nand for committing the murder and also against the remaining two accused for either committing the murder themselves or abetting Rama Nand in the commission of that offence.

13. Another material circumstance in this regard is deducible from the statements of the accused themselves. They have rather stated that it was Som Krishan who was threatening them as well as Sumitra and wanted her to serve as if for his own needs. Per their statements, the accused had no objection to the service done or higher studies pursued by Sumitra. Rather she had joined the service with* their consent. This is nothing but a deliberate lie, which is so exhibited by the trend of the letters referred to above. This would be a false explanation by the accused and a circumstance against them.

14. Besides the motive, another determining link in the chain of circumstances, is the false explanation given by the accused at every stage and their post-conduct which is self evident. The only hypothesis to which one can arrive is, that it is they who committed the offence imputed against them. Sumitra was last seen alive with Rama Nand and the other two accused. It is for them to explain her whereabouts. If they set up avowedly false story of suicide that would be an illuminating factor to implicate them. They cannot plead apologetically that her Salwar and shoes were found near the bank and so the inference was that she took a jump into the river, for which there could exist no valid reason. Could it be believed that she put off her Salwar and jumped naked

into the river while she was committing suicide. There is evidence to indicate that even the Salwar was not her's. Decidedly she was not wearing the gold chain and the watch as well as other clothes which she used to wear and was supposed to wear on that day as she was to return back to her parents. She left all these articles as if for the accused, and then committed suicide. She could have left a letter as she was an educated girl. There was no emotional upsetting. She took the step of suicide under the eyes of every body and in broad day light. She even took a small girl Sheela with her while going to commit suicide. The accused have of course stated that they had agreed for her service and it was Som Krishan who was threatening her. Where was then the necessity to commit suicide? The washer woman and the fisher men, who were present on the opposite bank never saw any body taking a jump in the river. As the postmortem examination of the body disclosed the lungs were found collapsed and no sand particle was detected. According to Dr. J. K. Sharma, that was a feature to indicate that she was not breathing when she fell into the water. All these circumstances impel the Court to dismiss the story regarding suicide. But the accused Shish Ram as well as others did take up that story right from the beginning. About the gold chain (Ex. P. 1) and watch (Ex. P. 2), Laxmi (P.W. 2) and Som Krishan (P.W. 33) both stated that she used to put them on almos every day. Rama Nand accused stated that she used to take them off while going to sleep. Thereafter on the next morning she used to wear them again. Kanshi Ram (P.W. 1) and Hira Mani (P.W. 29) proved the recovery of gold chain and watch from the house of Rama Nand on 4-6-1972. Admittedly she was to go back toher father on the morning of 14-5-1972. She should have worn the gold chain and watch while going to her parents" house. It is then for the accused to explain, in what circumstances the gold chain and the watch, as well as other clothes of Sumitra which she was wearing when she arrived, were left by her at their house. The Salwar (Ex. P. 14) and the shoes (Ex. P. 15) were not even brought to the Police Station. The investigating officer recovered them on 23-5-1972. Som Krishan (P.W. 33) stated that Sumitra never possessed the Salwar (Ex. P. 14) which was in litters, having patches of cloth over it. She was a sophisticated girl and educated too. According to Kamla (P.W. 3) she used to remain well dressed. It is, therefore, highly doubtful if the Salwar even belonged to Sumitra.-Another significant feature is that three of the defence witnesses--Khub Chand (D.W. 1), Godawari (D.W. 4) and Chet Ram (D.W. 7) who belong to the same village and were present at the house of the accused, were not shown this Salwar and shoes. The natural conduct of Rama Nand and others should have been to show the Salwar to these person, while they were describing how she was drowned in the river.

15. Devku (P.W. 8), Purbu (P.W. 10) and Shetu (P.W. 11) stated that they were present on the opposite bank of the river. They did not see any lady taking a jump. However, the accused sometime later came on the opposite bank and made a sign by showing a cloth to these witnesses indicating that some body had fallen into the river. All this was prima-facie a faked conduct on the part of the

accused. If Sumitra had taken a jump into the river, Devku and others must have noticed it. Two of these witnesses were actually plying boats and they might have even seen the body floating into the river. This post-conduct of the accused was clearly in their self defence. The indication is that they were creating evidence in their favour.

16. It was alluded to by the defence that Sumitra was planting chillies and thereafter complained of call of nature. She took along with her Sheela and went a distance of about two furlongs upto the river. The very rasta was precipitous and full of pebbles and loose boulders. According to the learned Sessions Judge who made a spot inspection, it was difficult for even a strong man, what to say of a fragile lady, to have traversed such a difficult path for attending the call of nature. Admittedly there was nullahs on two sides of the fields. Like others, Sumitra could have gone towards them for easing herself. In the first information report the distance of river from the field is noted as two furlongs. The learned Sessions Judge has mentioned it much more than this. Being an educated girl and especially when she was going back to her father's house Sumitra must not have planted chillies. The statement of Kamla (P.W. 3) may be referred to in this connection. This lady is of the same age as of Sumitra. She was her class mate and bosom friend having read from first primary to class ten. According to her Sumitra used to remain well dressed. She used to complain that her in-laws were objecting to her service and further studies and might well even put her to death because of it. Kamla significantly stated that both Sumitra and she had previously decided, that they would not go in for marriage but would continue their further studies. The statement would indicate the nature of Sumitra and the mode of life she loved to live. It is difficult to believe that she was wearing the tattered Salwar and was planting chillies when according to Rama Nand she had to put on the gold chain and watch as well as other clothes, and to leave to her parents' house for the birth anniversary of her cousin. Apart from this, Rama Nand himself was lying under stomach-ache which is clear from the First Information Report (Ex. P.W.). If that was so, why she did not attend her husband rather than plant chillies in the fields. The clothes worn by Sumitra at the time she left her house were identified by Laxmi (P.W. 2). Ordinarily she was to wear these very clothes while going back to her parents. But it appears she did not wear any of them and rather wore the tattered Salwar. This is again a circumstance worth considering.

17. The defence produced several witnesses to prove that she was found planting chillies. Nearly every one of these witnesses spoke false which is evident from their statements. The witness Mast Ram (P.W. 27) was apparently won over. He was cross examined by the prosecution and he ultimately admitted that he was speaking false and did not know anything as to whether Sumitra was seen planting chillies at that hour of the day. The learned Sessions Judge has given reasons, to which I subscribe, that none of the defence witnesses was worthy of credence. Sheela was not produced by the prosecution. For this the simple answer would be, that the prosecution was not performing the function of

defence. They were required to produce only such witnesses who were necessary to unfold their narrative. According to the investigating officer Sheela was incapable of making intelligible statement. Hence she was given up. If the defence wanted, they could have produced her. For obvious reasons they never did so. How could, therefore, an exception be taken, that Sheela was not produced by the prosecution? In this connection assistance can be obtained from *Stophen Seneviratne v. The King* AIR 1936 Privy Council 289. It is a wrong idea, observed their Lordships, that the prosecution must call witnesses irrespective of considerations of number and reliability or that it should discharge the functions both of prosecution and defence. If it does so, confusion is very apt to result, more especially so, when the prosecution calls witnesses and proceeds automatically to discredit them by cross examination. Thus no exception can be taken that Sheela was not produced in the Court.

18. About the Court Inspection, an exception was taken by the learned Counsel by saying, that the same should not be relied upon. Whatever was written by the learned Sessions Judge as a result to his ocular observation was, to my mind, admissible. The defence was at liberty to have pointed out any other physical feature which according to them was beneficial to their defence. Rather the presumption is that they would have pointed out such a physical aspect had it been present there. Therefore, if the learned Sessions Judge noted down the distance or the condition of the rasta or the difficulty one would experience in traversing that rasta, he had put down all that he saw on the spot. He was at liberty to make use of this material. He was not recording any, witness nor was he forming any opinion of his own aliunde, what he had himself seen. The learned Counsel relied upon *Pritam Singh and Anr. v. The State of Punjab* 1956 S.C. 415. In that case their Lordships no doubt stated with reference to spot inspection that the observations of a Magistrate cannot take the place of evidence because the same are not tested by cross examination. With respects to their Lordships, those observations were confined to the facts of that case. In that case the Magistrate had asked the accused to put on the shoes which according to the statement of the accused were tight on his feet but according to the observations of the Magistrate were easily worn by him. From this an inference was sought for, that the shoes belonged to the accused. Notwithstanding what was stated for spot inspection their Lordships believed that circumstance, presumably basing their opinion on the ocular observation of the Magistrate a fact which did not require any cross examination. Similarly in the present case if the learned Sessions Judge himself saw the condition of the rasta and inferred thereby that Sumitra could not have traversed it, there was no fault in that and the inspection note was admissible in evidence.

19. It is, therefore, irresistible to conclude that a palpably false explanation was given by the accused. That by itself is a determining link in the chain of circumstantial evidence. A few judicial decisions may be noticed in that regard. In *Fazaldin v. Emperor* AIR 1930 Lah 265, a Division Bench made the following observation:

Where the evidence against the accused is that the deceased was last seen alive in his company and that the accused disappeared immediately after the murder and the accused sets up a palpably false defence that he did not know the deceased and was never in her company, these facts and circumstances are sufficient to bring the offence of murder home to the accused.

In this case Rama Nand did disappear almost immediately after the murder and decidedly he set up a palpably false defence. This circumstance by itself may be sufficient to bring home the offence of murder against him. In *Deonandan Mishra Vs. The State of Bihar*, their lordships made the following observation which is not without significance.

It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

The test is only of a reasonable basis for a conclusion that the accused is a probable assailant. In my opinion this test is satisfied in the present case.

20. In *Golam Majibuddin and Anr. v. The State of West Bengal* 1972 C.R.I.L.J. 1342, their Lordships of the Supreme Court were considering a case of proof of murder on circumstantial evidence. It was held that the evidence of false explanation is not only relevant u/s 8 (Evidence Act) but is of considerable importance when it was given soon after the alleged occurrence and was apparently designed to give to the facts an appearance favourable to the accused. In the present case similarly the accused were giving the facts an appearance favourable to them.

21. At this stage. a few more instances concerning the post-conduct of the accused need be noticed. Rama Nand admittedly left the village on May 17, 1972, and thereafter he returned on May 19, 1972. According to Som Krishan (P.W. 33) Rama Nand left for Simla on May 16, 1972, and came back after 3 or 4 days. The investigating officer Daulat Ram (P.W. 38) further stated that Rama Nand was not available in the village from May 23, 1972, to May 27, 1972. It is significant that the own wife of Rama Nand had disappeared on May 14, 1972, and according to him committed suicide, still he did not care to stay in the village to perform the funeral rites. Rather he chose to leave the village and go to Simla, to which place he obviously went at two occasions, at first on the very day of the occurrence and thereafter on May 23, 1972. It is further made out from the evidence that Rama Nand discouraged people from searching out the body in the

river. According to him it was of no consequence as the dead body was not likely to be found somewhere in the river. This is so stated by Som Krishan (P.W. 33) and also by another witness Bishweshwar Datt (P.W. 30). Som Krishan stated that he had gone to Jherwin on the next day of the occurrence and when he met Rama Nand, the latter stated that there was no use to search the body in the river. Bishweshwar Datt had also accompanied Som Krishan while the latter came to Jherwin on May 15, 1972. Rama Nand was asked to perform the funeral rites and a thorough search was to be made in the river. To this he replied that her body was not likely to be found in the river. These statements are also self revealing. The indication is that Rama Nand already knew that Sumitra was murdered and most probably her body was concealed somewhere in the jungle. I have already pointed out the circumstance of the recovery of gold chain and watch as well as the wearing clothes of Sumitra, from the house of Rama Nand. The indication is that she never committed suicide but was done to death after these articles were removed from her body. Yet another important circumstances is the presence of Kali Datt accused near the corpse which was discovered at Randol on the morning of June 5, 1972. The natural inference is that Kali Datt was somehow associated with that discovery of corpse. It was for him to explain in what circumstances he reached the village Randol and found the dead body in the river.

22. The learned Sessions Judge also drew assistance from the recovery of pranda from the jungle. Laxmi (P.W. 2) identified this pranda and associated it with the deceased. The recovery witnesses Min Chand (P.W. 19) and Balak Ram (P.W. 22) proved that pranda was found inside the jungle. Thereafter a dopatta was recovered from the house of the accused. The hair found entangled in the dopatta was subsequently compared with the hair found embedded in the Pranda. The microscopic examination was done by Shri H.S. Longia, Assistant Director, Forensic Science Laboratory, Chandigarh. His report is Ex. PA and the conclusion drawn by him was that both the pieces of hair could have come from the crown region of one and the same person. This is again a circumstance which indicates that pranda of the deceased had reached the jungle and it was for the accused to explain what were the circumstances for the pranda to have gone to that spot inside the jungle. Two witnesses Karmu (P.W. 4) and Het Ram (P.W. 5) stated for a torch light phenomena which they saw inside the jungle. According to them late in the night some one visited the bank of the river while coming from the jungle and going back from there. From this the inference was drawn that in all probability the dead body was thrown in the river by those persons who had gone to the riverside by the help of torch light. These circumstances although by themselves not very material, assume some importance when coupled with other circumstances and may be helpful to draw an inference that Sumitra was done to death and her body was concealed somewhere until it was thrown into the river.

23. It can admit of no doubt that a report based on comparison of two pieces of hair under microscopic examination has been recognized as good evidence in a

Court of law. For this reference can be made to *Kanbi Karsan Jadav Vs. State of Gujarat*, . Their Lordships have observed that from the microscopic examination of the hairs it is possible to say whether they are of the same or of different colours or sizes and from the examination it may help in deciding where the hairs come from.

24. Next I pass on to another circumstance namely the recovery of corpse at Randol. Kali Datt was admittedly found near the corpse under the circumstances which to my mind were not properly explained by him. As to the identification of the corpse to be that of Sumitra, the peculiar feature of case is that none of the prosecution witnesses was cross examined on that point by the defence. When the statement of a witness is left uncross-examined, the presumption is that the party cross examining does not intend to challenge the veracity of the witness in so far that part of the statement goes for which cross examination is not directed. This presumption can decidedly be displaced by evidence aliened or by pointing out any inherent defect in the statement itself so that no reliance can be placed upon it. Such inherent defect was pointed out to the Court with reference to the medical evidence. As I shall presently point out the medical evidence in this case is totally unconvincing. It neither supports the defence nor demolishes the case of the prosecution. The witnesses Kanshi Ram (P.W. 1), Laxmi (P.W. 2), Mehar Chand (P.W. 9), Arjan Singh constable (P.W. 26), Hira Mani (P.W. 29), Som Krishan (P.W. 33) and the investigating officer Daulat Ram (P.W. 38) need be referred to in this connection. None of them was cross-examined on the point that Laxmi and Som Krishan identified the corpse to be that of Sumitra by seeing the burn mark on the skin at buttock portion, carious tooth which was admittedly present and one bulging tooth found in the jaw. The witness Kundan Ram (P.W. 12) further stated that the skeleton appeared to be of a lady. The effect on the truth or otherwise of the statement of a witness who is left uncross-examined was noticed by a learned single Judge in *Velu Pillai Padakalingam v. Paramanandam Yesudassan* AIR 1954 TRA-CO. 152 . It was held that an omission to cross examine a witness would lead to the inference that the evidence is accepted subject of course to its being assailed as inherently improbable. In this connection, it was submitted by the learned Counsel on behalf of the Appellant that Som Krishan (P.W. 33) did not state before the police about that mark of burning. At the same time it is correct that he had not denied for that mark in the police statement. Following *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, the omission could not amount to contradiction. It cannot be stated that the omission by necessary implication could be deemed to be a contradiction of that statement made in the witness box.

25. It was pointed out that in the inquest report (Ex. P.F.) the investigating officer neither mentioned the marks of identification nor specified that Laxmi or Som Krishan had identified the dead body. u/s 174 of the Code of Criminal Procedure, 1898, the requirement is that the officer-in-charge of a police station shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as

may be found on the body, and stating in what manner, or by what weapon or instrument, if any, such marks appear to have been inflicted. It is thus nowhere provided that the marks of identification or the persons identifying need also be mentioned in the report. Therefore, at any rate it was not a legal requirement of the inquest for the investigating officer to have mentioned any mark of identification or even the fact that some witness had identified the body on the spot. It would be fatuous to argue that inquest report was substantive evidence. It could only be considered a previous statement of the investigating officer and his credit could be impeached with reference to that statement while he was under cross examination (Section 155 of the Indian Evidence Act). For this the prescribed procedure u/s 145 of that Act was required to be followed. But that was obviously not done. The investigating officer was not asked as to why and in what circumstances he did not specify those facts in the inquest report. All the same he had stated while in the witness box that the marks of identification were present on the body and that Som Krishan and Laxmi had identified the body to be that of Sumitra. In my opinion, therefore, no assistance can be given to the defence by this omission made while drafting the inquest report. The importance of getting a clarification from a witness in a situation of like nature has been emphasized by the Supreme Court in *Ghasita alias Ghasi Ram Vs. State of U.P.*, although in an entirely different set up. Any inconsistency found between the statement made in Court and the statement discovered in a document which was written at a prior stage, was required to be put to the witness so that he could clarify it. If that is not done no advantage can be derived by the person intending to make use of such inconsistency. In *Stephen Seneviratne v. The King* (Supra) the Privy Council also observed in 1936 that evidence of previous statements made by a witness, whose good faith has not been questioned by the Court, cannot be given without previous cross examination of the witness as to such statements. In support of the proposition that the inquest report is not substantive piece of evidence, reliance can be placed on *Surjan and Others Vs. State of Rajasthan*, The Appellant relied on *Gurdev Singh and Ors. v. The State* 1963 P.L.R. 409, where a Division Bench of Punjab High Court considered the value of the statements narrated in the inquest report. A reading of that case indicates that the facts therein were entirely different than what have been set out in the present case. The observation of their Lordships was, that the facts of the occurrence were not mentioned in the inquest report and so the inference could be drawn that till that time the investigating officer who prepared the inquest report was not sure about the facts and that argument was not considered to be devoid of any force. The situation in the present case is entirely different. The only thing which can be pointed out is a remissness on the part of the investigating officer who could have specified the marks of identification against the appropriate column and could have also stated therein that two of the witnesses had identified the corpse, which he never did. If on a proper evaluation of the various facts and circumstances it transpires to the Court that the witnesses did identify the corpse may be on a data insufficient, any remissness on the part of the investigating officer will not take away the

probative value of their statements [see 1974 Cri App.R 56 (S.C.)].

26. Now I shall advert to the medical evidence. The post-mortem examination was conducted by Dr. J.K. Sharma (P.W. 14). He was an inexperienced Medical Officer. This is so because he himself showed a lack of confidence and requested another doctor to perform the post-mortem examination. Nevertheless he was asked to do the work which he did, apparently in a most perfunctory manner. He already knew that the age and sex of the skeleton were required to be ascertained. For this the minimum he could do was, to measure the height and girth of the skeleton which he never did. He did not weigh the lung, heart or spleen which would have also given some idea regarding age. There is definite indication that the report was delayed by him. The post-mortem examination was completed on 7-6-1972 although the doctor dated it by some mistake as 7-7-1972. The report was given to Bhagat Ram constable on 10-6-1972. The doctor had separated components of this skeleton which were skull, femur and mandible which he intended to send to other experts for opinion. He prepared two sealed bundles and the mandible could only be in one of these bundles. Thereafter he broke open the seals and brought the mandible himself to Dr. M.L. Ahuja, Radiologist (P.W. 16) on 8-6-1972. The mandible was left with him for that date. Thereafter on 9-6-1972 he took the mandible to Dr. Pathania (P.W. 15) the Dentist and left the mandible with him for the dates 9-6-1972 to 10-6-1972. Thereafter on 12-6-1972 the Doctor again sealed the mandible and sent it along with other components to Dr. O.P. Bhargawa (P.W. 31) the Professor of Anatomy of the Medical College. The report of Dr. Ahuja was given to the police on 21-6-1972 while the report of Dr. Pathania was handed over to the police on 17-6-1972. Dr. O.P. Bhargawa wrote his report on 27-6-1972. Thereafter on 19-10-1972 Dr. Sharma sent his final report upon the post-mortem examination. In the opinion of all these doctors the age of the skeleton could not exceed ten years. Dr. Ahuja found the mandible from a body of only six years of extra uterine life. Dr. Pathania discovered the age of mandible to be less than ten years. Dr. O.P. Bhargawa found it between ages of 5 to 9 years. There was overwhelming evidence that the measurement of this skeleton from shoulder to the cut portion of thigh was two feet and four inches. The witnesses before whom the investigating officer measured the skeleton and found its dimension are Kanshi Ram (P.W. 1), Laxmi (P.W. 2), mchar Chand (P.W. 9), Kundan Ram (P.W. 12), Hira Mani (P.W. 29) and Som Krishan (P.W. 33). The investigating Officer Daulat Ram (P.W. 38) of course gave his own statement. Not one of these witnesses was cross examined by the defence on this point as to whether the skeleton was measured and from shoulder to cut portion of the thigh the length was found to be two feet and four inches. If these statements are believed, it would be undisputed that the mandible could not be from the skeleton of a child bearing the age below ten years. This is so stated by Dr. O.P. Bhargawa (P.W. 31) who was decidedly the most competent doctor produced in the case. Upon this the learned Sessions Judge inferred that the mandible was replaced at some stage or the other, may be due to inadvertance on the part of Dr. J.K. Sharma

who admittedly broke open the seals and brought the mandible from one place to the other in unsealed condition. It may also be stated that the mandible was not actually brought by Dr. Sharma but was given to a sweeper who used to accompany him.

27. There was a slight controversy as to the terms "Sere" or "Sir" used in the inquest report. In the original report the term used is "Sere" which does not appear to be an interpolation. The English translation was, however, made as "Sir" or "head" which is clearly a clerical mistake. It is manifest the head itself was found like a ball lying at some distance from the skeleton. This is so clear from the photographs submitted in the case. There was no "Sir" or "head" and, therefore, no measurement was possible from the head and it could only be from the shoulder for which so many witnesses have stated.

28. There are two more circumstances which need be noticed. According to Som Krishan (P.W. 33) the right side tooth of the mandible was carious while according to Dr. Pathania the left side tooth in the mandible was found carious. That is again an indication that most probably the mandible produced before Dr. Ahuja or Dr. Pathania or Dr. Bharagwa was not the same which was found with the skeleton. The second aspect is the report of the Chemical Examiner which indicated that alcohol and choloroform were found in the body of the deceased. It is difficult to believe that alcohol as such, was administered to a child. The legs were cut, according to Dr. Sharma, by some weapon and the case was decidedly one of murder.

29. The team of doctors including Dr. Sharma were summoned in the High Court to clarify their previous statements. I can only point out a significant feature in the statement of Dr. Sharma inasmuch as he attempted not only to justify his previous stand in the report but also clearly indicated a leaning towards the defence. He told that the body was of an unknown person because that fact he found written in the inquest report. At the same time he did call Som Krishan for identification. There is a writing to this effect on the post-mortem report itself. According to him he could detect the sex in the case but could not do so "because the bones were covered by ligaments"--a statement which is not very much clear to the Court. He did not himself pursue the matter any further regarding determination of age or sex. He became definite in the High Court that the burn mark could not have been there due to purification. He persisted to say that the length of the deceased would be less than four feet even though the measurement of the skeleton from shoulder to the cut portion of the thigh was two feet and four inches. This is decidedly incorrect because according to Dr. Bhargawa the length of the deceased would be near about five feet. Dr. Sharma tried to explain the presence of alcohol and choloroform in the body. Although he was not sure before the Sessions Court yet he made some special study with reference to books on Chemistry and stated that both alcohol and choloroform were the result of purification. He further stated that Dr. Grover and he both asked Som Krishan as to whether he could identify the body. The answer

received was in the affirmative. From this inference can even be drawn that Som Krishan must have identified the body also at the time of its recovery. Dr. Sharma did not consult Dr. Grover when he broke open the seals. He admitted that inner side of the flesh was present in the buttock portion of the body. At the same time he was definite that the burn mark could not be there. In his enthusiasm before the Sessions Court Dr. Sharma even stated that average minimum height of a female in Himachal Pradesh would be 3-1/2 feet, and that in the case of a child of 8 or 9 years the length between the shoulder to the beginning of thigh would be 2 feet 4 inches. Both the statements are prima-facie incorrect.

30. In the forwarding letter which the investigating officer wrote to the doctor for post-mortem examination (Ex. P.H.) and also in the reports submitted by the doctors, it was specified that the body was of an unknown person. That was done because in the police papers it was so specified. Similarly in the receipt (Ex. P.K.) written by the police for the signature of Som Krishan when the dead body was handed over to him for cremation, it was mentioned that the body was unidentified. One can understand the grief and the state of mind of Som Krishan. If he did not notice that expression used in the receipt, nothing adverse can be inferred against him. Dr. Pathania (C.W. 2) very much stated in the High Court that as it was written in the requisition slip that the body was of an unknown person so it was repeated in the reports of the doctors. This would account for that expression being used in the reports.

31. There is a string of witnesses who are from the local Panchayats and they have come to state that no dead body was thrown into the river between the dates 1-1-1972 and 5-6-1972. These witnesses are Hari Chand (P.W. 18) of Basantpur Panchayat, Ram Rattan (P.W. 20) of Suni Panchayat, Amru (P.W. 24) of Baksaad Panchayat, and Hira Mani (P.W. 29) Pradhan of Tatapani Panchayat. Shish Ram accused has even admitted that no dead body was thrown during this period into the river. It can be taken judicial notice of that villages in Himachal Pradesh are not densely populated in the area in question, as such, it was not difficult to have discovered if any murder took place of a child or of an adult and the body was thrown into the river. The only incident related to sumitra and in all probability the corpse was of that lady.

32. For the circumstances delineated above and pitted against Dr. J.K. Sharma (P.W. 14) no reliance could be placed on the post-mortem report, at any rate on the question regarding identification. Similarly the other doctors would be of no assistance to the Court. In all probability the mandible examined by them was not the same which was discovered with the corpse. Once we exclude the medical evidence, and consider it unhelpful to prove or disprove the identification, we are left with oral evidence. The following circumstances are established by such oral evidence:

(a) The decomposition of the body proved that the person had died 22 days before and the date almost coincided with May 14, 1972;

(b) No adult or child was thrown into the river in between this period which is clear from the certificates issued by the Panchayats;

(c) No child or adult was murdered during this

period because that fact could be known-- the population being so much sparse in this part of the district;

(d) The presence of Kali Datt accused who

discovered the corpse and dragged it outside and the dogs ate up the flesh in his presence so that any mark of identification was obliterated;

(e) The fact regarding identification by Som Krishan and Laxmi proved by a string of witnesses. It is a different question that the burning mark was or was not there and the data for identification was otherwise insufficient. Nonetheless the identification was done by these two witnesses;

(f) Attempt by some body to replace the mandible which was obviously for the benefit of the accused;

(g) Som Krishan as well as the accused accompanied the corpse upto the hospital. Thereafter cremation was done by Som Krishan.

All these circumstances lead to an inference that the body was of Sumitra. It could be so, that the witnesses detected some spot may be due to any reason on the buttock portion and took it to be a burn mark and associated it with Sumitra. It could as well be that at that stage when the body was freshly recovered from the river some mark was available which disappeared after 52 hours when the post-mortem examination was conducted. At any rate the inner layer of flesh was there and if the burn was deep enough some mark might have been left over.

33. In this connection it was pointed out that Som Krishan did not mention about the burn mark before Dr. J.K. Sharma when he wrote on the post-mortem report that he had identified the body to be that of Sumitra. That was again a previous statement of the witness and was not put to him when he made a statement in the Court. He was not given opportunity to explain the circumstances why he omitted to mention about it at that time. Even if the burn mark is excluded, there was the carious tooth and the ocular assessment of skeleton by close relations. This coupled with other circumstances noted above leads to an inference that most probably the body was of Sumitra.

34. Another circumstance relates to Kali Datt accused. It is surprising that he was present at Randol very early in the morning as according to Hira Mani (P.W. 29) the corpse was noticed by Kali Datt before 7 A.M. The distance was four kilometres from Jherwin. How and why Kali Datt anticipated that a corpse would be found at Randol. It is stated that he was attempting to interfere with the corpse and actually dragged it outside the river. The dogs had eaten the flesh and when almost every thing was destroyed, assistance was obtained from others and dogs were scared away. Why all this was done? It is argued, with

considerable force, that Kali Datt would not have gone to Dilu (P.W. 6) to give information about the corpse. Perhaps he could not avoid that because another Dilu (P.W. 7) had seen him interfering with the corpse and the cat was already out of the bag. That is why, after making sure that marks of identification were destroyed by the dogs, Kali Datt faked an innocent discovery of corpse by him. He even stated to Kanshi Ram (P.W. 1) that it was not of Sumitra. According to Mehar Chand (P.W. 9) the body was dragged by Kali Datt upto a distance of 30 to 35 feet. The skull got dislocated from the trunk due to this dragging and was lying at some distance.

35. In this statement Kali Datt denied that Som Krishan and Laxmi had not arrived for identification. This statement was obviously incorrect because of so much evidence to the contrary. The learned Advocate-General even argued that Kali Datt enabled the dogs to eat away the dead body. At any rate Hira Mani in his letter (Ex. P.A.C.) very much stated that dogs had destroyed the dead body. What was the difficulty for Kali Datt to have scared away the dogs when he already possessed a Danda with which he was dealing with the dead body? It is also a circumstance worth noticing that in 22 days the body could arrive only upto four kilometre's distance which could only be when it was detained somewhere or kept outside the water concealed at a place and subsequently thrown into the river. Kali Datt made another significant statement that he wanted Dilu to identify the corpse. Admittedly Dilu was a total stranger to the family. Kali Datt should not have asked him to identify the corpse.

36. It was stated that Kali Datt was arrested in September, 1972, and should have been arrested in June, 1972. If that was not done no inference could be drawn against the prosecution. Therefore, in my opinion, the behavior of Kali Datt and his presence near the corpse is a suspicious circumstance not only against him but also against the other accused who are his close relations.

37. It is true that in law a conviction for an offence does not necessarily depend upon the corpse delciti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpse delectate not traceable. Therefore, even if any doubt is expressed as to corpse delicate for which there does not appear to be any reason, the circumstances otherwise complete the chain of evidence against the accused and they could be convicted for the offences.

38. In the last it was argued that the necessary ingredients for an offence u/s 201 of the Indian Penal Code were not made out against Kali Datt and Shish Ram. Again the argument appears to be devoid of any merit. To establish the charge u/s 201 the prosecution had to prove that an offence had been committed and that the accused knowing or having reason to believe that an offence had been committed and with the intent to screen the offender from legal punishment had caused the evidence thereof to disappear. The narration given above proves that both Shish Ram and Kali Datt knew or had reason to believe that murder of Sumitra was committed. Shish Ram as well as Kali Datt actively

helped in setting up a wrong case and actually diverted the course of investigation in their favour. Shish Ram went and lodged the first information report which was clearly incorrect and even the investigating officer did not believe the story of suicide. That was an attempt on his part to screen the offender from legal punishment. They had caused conjointly the evidence of murder to disappear. Kali Datt was present near the corpse and had even succeeded in destroying it to avoid identification. Therefore, in my opinion, the offence u/s 201 was amply made out against these two accused.

39. A luke-warm argument was advanced that common circumstances existed against all the three accused and, therefore, Shish Ram and Kali Datt should not have been treated with light punishment u/s 201. For this the answer is, that no doubt there was common intention with all the three accused to commit the murder and as such the remaining two could also be convicted of the offence u/s 302 read with Section 34 but the learned Sessions Judge has not chosen to do so. We do not consider it necessary to issue a notice for converting the charge to a higher offence so that enhanced punishment could be awarded. Therefore, nothing can be inferred in favour of the three accused because of the omission on the part of the trial Judge to have convicted and sentenced Shish Ram and Kali Datt also for the offence u/s 302.

40. In ultimate analysis, in my opinion, no defect could be pointed out to the conclusion reached by the learned Sessions Judge. The appeal is dismissed and the conviction and sentence of the three accused are maintained.

41. The accused Shish Ram and Kali Datt are on bail and their bonds are cancelled. They have to surrender forthwith to serve out the sentence.

C.R. Thakur, J.

42. I agree.