
(2015) 05 SHI CK 0080

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 437 and 447 of 2012

Som Dutt and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 34, 392, 411

Citation : (2015) 05 SHI CK 0080

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Lakshay Thakur, for the Appellant; Ramesh Thakur, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.

1. Since both the aforesaid appeals arise from a common judgment hence they are being disposed of by a common judgment.

2. Both the appeals are directed by the accused/appellants against the impugned judgment rendered on 24.8.2012 by the learned Additional Sessions Judge (Fast Track Court), Solan in Session trial No. 3FTC/7 of 2010, whereby, the learned trial Court convicted and sentenced the accused No. 1 and 2 for theirs having allegedly committed the offences punishable under Sections 302, 392, 201 and read with Section 34 of the IPC and accused No. 3 Satya Prakash was convicted and sentenced for his having allegedly committed the offence punishable under Section 411 of the IPC.

3. Brief facts of the case are that on 14.6.2009 at Gauri Apartments, Kathog, P.O. Salogra, dead body of Mrs. Uma Sood was found in drawing room of her flat whereas dead body of Dr. Ramesh Sood, her husband was found in the adjoining

room of the apartment which was noticed by one Kamlesh, working as domestic servant in the house of deceased who further informed Atulya Sood a close relative of Ramesh Sood and consequently information was also given to son of deceased namely Sanjeev Sood who resided at Delhi and was employed in a company. Said Kamlesh has visited apartment as usual a day before i.e. on 13.6.2009 when she was given quilt covers by deceased for interlocking but on the next day when police visited Gauri Apartments on an information of death of the old couple, Kamlesh noticed that all the golden ornaments which deceased was wearing on 13.06.2009 were missing. The police investigation reveals that on 14.06.2009 at about 7.45 a.m., information was given to police by one Mohan Singh resident of Garui Apartment when Inspector Jagdish Chand Kanwar along with S.I. Krishan Kumar and other members of police party came and S.I. Kirhsan Kumar conducted formal investigation who also recorded statement of Sanjeev Kumar son of deceased couple besides prepared site plan. Dead-body of deceased Dr. Ramesh Sood as well as his wife Smt. Uma Sood were sent for autopsy to R.H., Solan and after post mortem dead body of deceased were handed over to Sanjeev Sood, their son. In his statement to the police, Sanjeev Sood did not express his suspicion over anyone in the murder of his parents, who were stated to be of good nature and kind hearted, as such, no one would have killed them but he suspected that two mobile phone Nos. 94181-64099 and 98163-65853 of deceased father were not traceable. Similarly one lock which was being put on the lower gate was not traceable. The police investigation further reveals that both the mobile numbers were kept under observation and monitoring by tele-companies by police and request was made to the Nodal Officer of BSNL, Airtel and Reliance for supplying names and addresses of the subscribers alongwith all incoming and outgoing call details of both the aforesaid mobile numbers of the deceased. It further transpires from the investigation that information was received that one sim card having IMEI No. 355542010579094 and another IMEI No. 3556540096044120 were used even after the death of Dr. Ramesh Sood. On these IMEI numbers five sim cards had been used and the number of the sim card were 98175-02005, 98175-79753, 96250-33344, 96250-38844 and 98170-34791. A reference was thereafter, made by police to DGP Vigilance for obtaining call details of above said sims of IMEI numbers referred to above.

4. The detailed information received from tele companies revealed that Bhupinder one of prosecution witnesses was using mobile No. 98175-02005 and said mobile was purchased by him from accused Som Dutt and on being enquired from said Bhupinder, he told that accused Som Dutt had given him Nokia 1100 mobile in lieu of an advance of Rs. 1,400/- given by this witness to accused Som Dutt for making bed box which could not be given by him and at the same time accused Som Dutt could also not refund Rs. 1,400/- as demanded by Bhupinder. He initially offered Nokia 1100 mobile, however, this mobile set had gone out of order and thus, Nokia mobile 1100 could be used from 29.07.2009 to 03.08.2009 but the first set given by accused Som Dutt had gone out of order,

he agreed to provide another mobile Nokia i.e. 6030 mobile having IMEI No. 35542010579094 on which said Bhupinder used mobile No. 98175-02005 w.e.f. from 03.08.2009 to 22.08.2009 and this mobile was produced by Bhupinder to police which was seized vide memo in presence of H.C. Devender and one Vinod Kumar and consequently mobile set along with sim was deposited with MHC. It has also come in the evidence that besides removing the mobile phones abovestated, accused Som Dutt and Rakesh Kumar in furtherance of their common intention had removed golden ornaments of deceased Uma Sood weighing about 67.800 grams which were sold by them to accused Satya Parkash for a consideration of Rs. 60,000/- in presence of one Neeraj Juneja, an electrician in the Middle Bazar, Shimla, who knew accused as well as the jeweller. During interrogation, accused Som Dutt revealed on 24.8.2009 that he could identify shop at Shimla where he had sold the gold ornaments on 14.06.2009 and his statement under Section 27 of the Indian Evidence Act was recorded which was signed by witness H.C. Prem Dass and Rameshwar as well as accused himself. The shop of accused Satya Prakash at Middle Bazar, Shimla was identified by accused Som Dutt in pursuance to statement but on inquiry accused Satya Prakash disclosed that he had melted four bangles and rings and made new four bangles and two rings but pair of tops of the deceased remained in same condition. The police took into possession the ornaments vide recovery memo. On 23.8.2009, accused Rakesh Kumar and Som Dutt had taken the police at the spot and identified the places separately vide separate identification memos. Sanjeev Sood also produced bill of mobile Nokia 1100 in the name of his father Dr. Ramesh Sood. On 20.08.2009, accused Som Dutt made a disclosure statement and in pursuance to this disclosure statement got recovered the broken pieces of mobile Nokia 1100. On 30.8.2009, accused Rakesh Kumar disclosed that he had broken the sim and thrown on link road near NH, Solan to Shimla and in pursuance to this disclosure statement got recovered the broken pieces of sim in presence of witnesses. The witness, namely, Kamlesh had identified the gold tops of the deceased before the Executive Magistrate i.e. Naib Tehsildar, Sh. Narayan Singh and the police obtained a certificate to this effect. During the course of investigation it was found that the accused had by smothering murdered deceased Uma Sood at the first instance and thereafter Dr. Ramesh Sood in the adjoining room besides they dishonestly removed Rs. 1200/-, two mobiles and golden ornaments belonging to deceased Uma Sood. Accused Som Dutt, who was a mason/carpenter by profession was engaged by Dr. Ramesh Sood in Gauri Apartment at Village Kathog and some amount was outstanding to be paid to accused Som Dutt. It has also come in the investigation that accused Som Dutt was invariably called for wood work by deceased and accused was to take between Rs. 30,000/- to Rs. 40,000/- from deceased but when he went to take amount from deceased Uma Sood, she refused to make payment to him and intimidated accused by proclaiming that accused Som Dutt had sold wood and till the accounts qua entire material of wood used and sold by him is not settled by him, he would not be given any payment and while doing so she had retained the planer of accused Som Dutt.

On 13.06.2009, accused Som Dutt met one Rakesh Kumar resident of Ashwani Khad and told about his problem and then they made out the entire plan and both the accused entered into the apartment from lower gate when deceased Uma Sood came as prior to that day accused Som Dutt was called by the deceased couple for cutting a tree and after knocking at the door, accused No. 1 and 2 entered the drawing room when deceased Uma Sood came and accused demanded balance money and planer which was flatly refused by deceased Uma Sood. As per their plan they caused death of said Uma Sood by smothering and similarly her husband too met identical fate but on realizing at that very moment that someone was approaching in the flat where deceased couple was lying dead both of them ran away and remained underground for few days so that they could not be apprehended.

5. The case was investigated by Inspector Jagdish Chand Kanwar till 28.09.2009 and thereafter on 29.09.2009 Inspector Raj Kumar, the then SHO, Police Station Solan was entrusted with investigation. During the course of investigation, statements of the witnesses were recorded, post mortem of dead bodies of deceased were conducted besides report of FSL were also obtained. It was also revealed from the record that there was divergence of opinion of the medical expert and clarification was sought several times by the Superintendent of Police, Solan in this regard. Vide letter dated 3.9.2009, the medical board clarified to the Superintendent of Police that smothering/gagging could be one of the causes of death and also opined that deceased had died due to poisoning and asphyxia. At the same time, it was also opined that smothering/gagging could also be not ruled out as there were signs of asphyxia. Finally, vide letter dated 15.10.2009 which is the last and final opinion of expert had clarified to the Superintendent of Police, Solan that traces of organ phosphorus insecticide can be present due to consumption of fruits and vegetables and grains and traces of organophosphorus found in the lab report No. FSL9AD/Chem Toxin/-9-3713 is not sufficient to cause immediate death.

6. On conclusion of the investigation, into the offence, allegedly committed by the accused, report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court.

7. Accused Som Dutt and Rakesh Kumar were charged for theirs having committed offences punishable under Sections 302, 392, 201 read with Section 34, IPC and accused Satya Prakash was charged for his having committed an offence punishable under Section 411 of the IPC, by the learned trial Court to which they pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution examined 36 witnesses. On closure of prosecution evidence, the statements of the accused, under Section 313 of the Code of Criminal Procedure were recorded in which they pleaded innocence and chose to lead no evidence in defence.

9. On appraisal of the evidence on record, the learned trial Court, returned

findings of conviction against the accused/respondents.

10. The accused/appellants are aggrieved by the judgment of conviction recorded by the learned trial Court. The learned counsel appearing for the appellants have concertedly and vigorously contended that the findings of acquittal recorded by the learned trial Court are not based on a proper appreciation of evidence on record, rather, they are sequelled by gross misappreciation of material on record. Hence, they contend that the findings of conviction be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of acquittal.

11. On the other hand, the learned Assistant Advocate General has with considerable force and vigour, contended that the findings of conviction recorded by the learned Court below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

12. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

13. The marital couple named Mrs. Uma Sood and Dr. Ramesh Sood were residents of Gauri Apartments, Kathog, Post Office Salogra. Both are alleged to have been murdered by accused No. 1 and 2. The dead bodies of both the deceased in the apartment occupied by them located at Kathog, Post Office Salogra were noticed by PW-2 Smt. Kamlesh on 14.06.2009 when she visited the premises for performing household chores. The prosecution case is harboured upon circumstantial evidence. In a case which in its entirety is anvilled upon circumstantial evidence, a solemn legal obligation casts upon the prosecution to prove each of the links in the chain of circumstances. Even motive which otherwise may be irrelevant in a case anchored upon direct evidence, yet assumes preeminent significance in a case which is harboured upon circumstantial evidence.

14. The motive which is attributed to the principal accused Som Dutt, who is alleged to have allied with him, accused No. 2, Rakesh Kumar, to commit the offences for which both of them stood charged and tried by the learned trial court, is alleged to have sprouted from the fact as deposed by PW-1 and PW-2 of his having been engaged by the deceased to carry out carpentry work in their premises, his not having been paid remunerations thereof or his purported valid payments to him for his discharging the works of carpentry in the premises of the deceased having remained unsettled, as such, germinated the motive in his mind to murder both the deceased. However, the fact as evident on a reading of the testimonies of PW-1 Sanjeev Sood and PW-2 Smt. Kamlesh is of the deceased having retained the planer of the principal accused Som Dutt in lieu of her claim against the latter, of reimbursement by him to her of certain amounts advanced or paid to him hence recoverable from him. Nonetheless, a perusal Ex. P-8, which is the statement of account of 9.9.2006 portraying the fact of a total amount of Rs. 36,109/- having been paid by the deceased to accused Som Dutt

qua which vouchers Ex. P-1 to P-6 portraying his having received payments of the amounts comprised in them, from the deceased belies the factum that accused Som Dutt while his having not come to be paid his dues by the deceased for his having performed carpentry jobs at the premises of the deceased, nursed a motive against the deceased hence proceeded to eliminate them, in alliance with accused No. 2, Rakesh Kumar. Moreover, the factum existing in the testimony of PW-2 Smt. Kamlesh of the deceased Uma Sood having sold the planer of accused Som Dutt retained by her in lieu of the Principal accused Som Dutt omitting to reimburse advances or settle his accounts with her renders nugatory the factum of any existing strife inter se or discord inter se the deceased and the accused Som Dutt qua settlement of certain accounts inter se them. Reiteratedly, rather the fact as evident on a reading of the testimony of PW-2 Kamlesh is of the deceased Uma Sood having sold the planer of accused Som Dutt as retained by her, hence, manifesting the factum of no bickerings or discord inter se accused Som Dutt and deceased Uma Sood remaining alive or in existence qua whose existence accused Som Dutt nursed a motive against the deceased. In sequel, the motive as attributed to the accused staggers and stands capsized. Concomitantly, with the motive attributed to the accused by the prosecution having remained in the realm of mere allegations, besides not proven by cogent evidence, renders a vital and crucial link in the chain of circumstances to be hence severed as well as emasculated. For want of proof of motive, hence, the accused cannot be concluded to, for perpetuating their motive or for accomplishing their motive, proceeded to the premises of the deceased to murder them.

15. Another link in the chain of circumstances which was enjoined to be cogently proved by the prosecution was qua the cause of the demise of the deceased Uma Sood and Dr. Ramesh Sood. For ferreting the truth qua the cause of demise of both the deceased, an advertence to the testimony of PW-35 Dr. Raj Kumar Sharma, who along Dr. A.K. Singh and Dr. Subhash Thakur, carried out the postmortem examination on the bodies of both the deceased is relevant as well as germane. He in his examination-in-chief states that he alongwith Dr. A.K. Singh and Dr. Subhash Thakur, on 14.06.2009 at 3.00 p.m., conducted the post mortem examination on the body of deceased Uma Sood and in course thereof the following observations were recorded:--

"External Appearance: Well built with Salwar suit red check, white braw, grey hair with bindi on forehead eyes, mouth closed, fist open with post mortem lividity. Rigour mortis was present in the lower limb, pelvic joint and shoulder joint. No ligature marks were observed on neck. Multiple rounded inoculated marks over left arm as shown in diagram. Skull and spinal cord- No abnormality detected. In thorax ribs and cartilage-NAD, Pleura larynx and trachea-NAD, right and left lungs congested. Pericardium and heard-NAD.

In Abdomen-walls, peritoneum, mouth, pharynx and oesophagus-NAD. Stomach and its contents-Semi digested food with gas. Small intestine-full of gases. Large

intestine -full of gases. Liver, spleen, kidney, bladders and organs of generations - ND. Stomach with contents-part of intestine, liver, lungs, blood, part of skin, sample of hairs were sent for chemical analysis to FSL Junga."

Besides, he continues to depose that on the same day, he along with Dr. A.K. Singh and Dr. Subhash also carried out the post mortem examination on the body of deceased Dr. Ramesh Sood and in course thereof he observed the following features:--

"External appearance:- Normal built male body with white baniyan blue underwear and white pyjama. Pyjama was stained with blood opposite to the pelvic region with grey hair. Post mortem lividity positive, fist open, rigours moritus developed in peripheral parts. No external wound, no mark of ligature. Skull and Spinal Cord- No injury. Ribis and Pleura-NAD, Larynx trachea and both lunges congested. Heart and pericardium normal. In abdomen-wall, peritoneum, mouth, pharynx and oesophagus-NAD. Stomach and its contents- Semi digested food with gas. Small intestine-full of gases. Large intestine-full of gases. Stomach small intestine, liver contents from stomach, blood hairs, blood stained patch from pyjama sent for chemical analysis to FSL Junga."

Post mortem reports Ex. PW35/B and Ex. PW35/D have been deposed by PW-35 to have been signed by him along with Dr. A.K. Singh and Dr. Subhash Thakur. He has proved the signatures of Dr. A.K. Singh and Dr. Subhash Thakur as he was conversant with their signatures his having worked with them in the hospital. The final report qua the cause of demise of the deceased is comprised in Ex. PW35/E, which stands extracted hereinafter, has been proved to be bearing his signatures as well as the signatures of Dr. Subhash Thakur and Dr. A.K. Singh. Final report enunciates:--

"The stomach.....contain traces of organo phosphorous poisoning, so deceased died due to organo phosphorous poisoning with asphyxia."

The final opinion qua the demise of the deceased has been pronounced therein to be arising on account of consumption of organo phosphorus with asphyxia. Hence, given the existence of traces of organo phosphorus substance in the stomachs of both the deceased, the S.P., Solan, on 28.8.2009, addressed a letter comprised in Ex. PW35/F to the Medical Superintendent, Zonal Hospital, Solan, on strength whereof, the Medical Board, which was constituted for furnishing answers to the queries raised therein submitted its opinion comprised in Ex. PW35/G. Relevant portion whereof reads as under:--

"1. Whether the deceased died due to smothering/gagging as disclosed and confessed by the accused persons during interrogation? : Opinion is that smothering/gagging cannot be ruled out as there are signs of asphyxia.

2. Whether the contents of organo phosphorus remain present in human body due to consumption of vegetables, fruits and grain or food etc.?: Opinion can be given by Forensic Experts/person giving Viscera report in FSL Junga i.e.

quantitative and qualitative values of the substance.

3. Whether both deceased died due to poisoning or by smothering/gagging?: Cannot be given as single cause but definitely signs of poisoning and asphyxia were present.

4. Whether the cause of death of both the deceased could be smothering/gagging or otherwise?: as per opinion given in point 3. It is one of the causes."

The opinion comprised in Ex. PW35/G, postulates that smothering/gagging cannot be ruled out as there were signs of asphyxia and the cause of demise cannot be attributable to a single reason as signs of poisoning and asphyxia were present, besides smothering can be one of the causes. Another letter comprised in Ex. PW34/A was transmitted by the Superintendent of Police, Solan to the Medical Officer concerned for eliciting the opinion of the doctors concerned, in sequel whereof an opinion comprised in Ex. PW35/H was rendered. In Ex. PW35/H, it was pronounced that traces of organo phosphorous insecticides can be present owing to consumption of fruits and vegetables as well as grains. Further it was opined that traces of organo phosphorous found in the lab report were not sufficient to cause immediate death.

16. For testing the veracity of the deposition of PW-35 qua the cause of demise of the deceased, as comprised in Ex. PW35/E wherein the cause of demise of the deceased has been initially opined therein to be attributable to poisoning arising from the fact of existence of traces of organo phosphorous substance in the stomach(s) of both the deceased, as also, the veracity of the opinion rendered in digression thereto comprised in Ex. PW35/G wherein the cause of demise of the deceased has been rather attributed to be arising from smothering or gagging, has to be tested in the light of his deposition existing in his cross-examination. The opening part of his cross-examination by the learned defence counsel belies and overcomes the opinion comprised in Ex. PW35/G rendered by the team of doctors which constituted the Medical Board expressing therein the cause of demise of the deceased to be on account of smothering or gagging, inasmuch as therein he has openly proclaimed and voiced the fact that no external injury was found on the persons of each of the deceased during the course, when the team of doctors, who constituted the Medical Board conducted the post mortem examination on the bodies of the deceased, whereas their existence thereon would rather have alone pronounced the fact of their demise being attributable to smothering or gagging. He in his further part of his cross-examination concedes or acquiesces to the opinion expressed in Parikh's Textbook of Medical Jurisprudence and Forensic Medicine and Toxicology that in the event of the demise of the deceased being attributable to smothering or gagging foreign material has to be found on the person of the deceased. However, when foreign material is uncontrovertedly unavailable or found not existing on the body of each of the deceased nor any external injury or mark was found existing on the person/body of each of the deceased suggestive of smothering or gagging, consequently, the initial opinion rendered in Ex. PW35/E wherein the demise of

the deceased has been attributed to poisoning arising from consumption of organo phosphorous is to be concluded to have remained intact or to hold the field. The opinion qua the demise of the deceased expressed in Ex. PW35/E, cannot be benumbed or overcome by a subsequent opinion comprised in Ex. PW35/G. The opinion expressed and comprised in Ex. PW35/G in digression to the initial opinion in Ex. PW35/E, portrays unwarranted and uncalled for vacillations and dithering on the part of the doctors, who rendered opinion in Ex. PW35/E, even when there was want of or lack of any noticeable external injury on the person of the deceased during course of theirs having carried out post mortem on the respective corpses, for succoring a conclusion that hence the demise of the deceased is attributable to smothering or gagging. Moreover, the answer given to the queries existing at serial No. 2 in Ex. PW35/H, which stand extracted hereinafter:--

"2. Trace of organophosphorous found in the Lab report No. FSL(AD/Chem Toxin)/09-3713 is not sufficient to cause immediate death."

does surround the initial opinion comprised in Ex. PW35/E wherein the cause of the demise of the deceased has been attributed to consumption of organo phosphorus poison with haziness or nebulousness. However, the aura of haziness or nebulousness which has gathered around the cause of demise initially expressed by the doctors in Ex. PW35/E which stand extracted hereinabove, disappears in the face of an admission in the cross-examination of PW-35, of the FSL Junga having omitted in its reports to give the quantity of organo phosphorous poison noticed to be present in the stomachs of the deceased, besides further admission that with the quantity of the aforesaid poisonous substance having been not divulged in its reports by the FSL, it cannot be firmly said that the poison as detected in the stomachs of both the deceased was not sufficient to cause the death of both the deceased. Consequently, for fortification when this witness expresses his acquiescence to the factum that with the FSL Junga in its reports comprised in Exts. PA and PA-1 having omitted to reflect the quantum of organo phosphorous poison present in the samples sent to it for analysis, as such, the expression comprised in clause (2) of Ex. PW35/H, which stands extracted hereinabove, pronouncing that the traces of organo phosphorous found in the lab report is not sufficient to cause immediate death, is built upon shaky foundations rather the inference is drawable that the initial opinion of the team of the doctors comprised in Ex. PW35/E wherein the cause of demise of both the deceased have been attributed to the presence of organo phosphorous substance in the stomachs of the deceased holds the fields and that the subsequent opinion comprised in clause 2 of Ex. PW35/H is entirely anvilled upon surmises and conjectures. Therefore, the earlier opinion of the Medical board comprised in Ex. PW35/E holds the field qua the cause of the demise of both the deceased.

17. The further existence of an admission in the cross-examination of PW-35 that in a case of death by poisonous gases there is absence of any injury mark

external of internal on the body of the deceased. Consequently, it can be forthrightly concluded that given the absence of injury marks external or internal on the body of the deceased, the demise of the deceased was caused by consumption of organo phosphorous substance, also, when he in his cross-examination discloses the fact that asphyxia is caused for want of oxygen, then the asphyxia attributed in Ex. PW35/E to be the one of the causes of demise of both the deceased can be concluded to have erupted on account of consumption of poisonous substance by both the deceased sequencing emission of poisonous gases therefrom which balked the inflow of oxygen to the respiratory tracts.

18. The effect of the above discussion is that the opinion of the team of the doctors comprised in Ex. PW35/E is to be held to be the conclusive opinion qua the cause of demise of the deceased as ascribed therein and that the further opinion of team of the doctors comprised in Ex. PW35/G in digression to the earlier opinion is wholly unfounded for want of hard and concrete material rather anvilled upon conjectures and surmises and is in digression to the reports of the FSL comprised in Ex. PA and PA-1 wherein traces of poison have been revealed therein to be existing in the viscera of both the deceased, quantity whereof has been omitted to be mentioned, as such, enfeebling and undermining the factum as disclosed in clause 2 of Ex. PW35/H that the traces of organo phosphorous is not sufficient to cause death besides, deter the medical board to conjecturally conclude that the quantum of poison present in the stomachs of both the deceased was insufficient to cause their demise. More so, when it was open only for the FSL to record in its report the factum of the quantum of organo phosphorous substance existing in the viscera of both the deceased and whether being sufficient or insufficient to sequel the demise of both the deceased even when the FSL entailed reticence qua the quantum of organo phosphorous existing in the viscera of both the deceased being sufficient or not sufficient to cause death. It was not open for, when the reports of the FSL comprised in Ex. PA and PA-1 omitted to divulge therein the quantum of organo phosphorous substance, the team of the doctors, who rendered opinion No. 2 in Ex. PW35/H to espouse therein that the quantum of organo phosphorous substance detected in the lab record concerned was not sufficient to cause immediate death. Consequently, the demise of the deceased is to be concluded to be suicidal not homicidal, as a naturally corollary then the attribution of guilt to accused No. 1 and 2 in murdering the deceased by taking to smother or gag them cannot be concluded to be having any foundation upon any probative evidence on record. Moreover, there exists no evidence on record portraying the fact of the accused having forcibly administered poison to the deceased as the post mortem reports of the deceased voices the fact of no ante mortem external or internal injury marks having been noticed on their bodies, though to then necessarily occur, by the team of doctors while conducting the post mortem examination on the dead bodies of the deceased.

19. Accused No. 1 and 2 are alleged to have stolen ornaments i.e. Gold tops, Exts. P 13 and P-15, Bangles Exts. P-15 to Ex. P18 and gold rings, Exts. P-19

and P-20, in course whereof they committed murder. The gold ornaments of deceased Uma Sood allegedly stolen by the accused are alleged to have been sold by accused No. 1 and 2 to accused No. 3. Some of the gold ornaments allegedly sold by accused No. 1 and 2 to accused No. 3 stood melted at the instance of the latter yet some of the gold ornaments comprised in Ex. P-13 and P-14 remained unmelted or intact. The prosecution strived to connect the accused with the theft of the gold ornaments of the deceased Uma Sood and concomitantly with the murder of both the deceased as carried out by them for accomplishing their motive of committing theft in the house of the deceased, by relying upon the testimony of PW-2 Kamlesh, the maid of the deceased, who in presence of PW-17, Narain Singh Chauhan, Naib Tehsildar has identified tops Exts. P-13 and P-14. However, the existence of an admission in the cross-examination of PW-2 Kamlesh, who identified gold tops, Ex. P-13 and P-14 of theirs being commonly and easily available in the market, renders the factum of both the aforesaid while being not uncommon, as such, easily procurable besides the fact of their easy procurability, the further fact of the son of the deceased having omitted to identify Ex. P-13 and P-14 in his examination-in-chief, though he was the best person being the son of the deceased to portray credible evidence of both being owned and possessed by the deceased entwined with the fact that given the absence of the further preeminent evidence of any insignia existing on them as a mark of their exclusivity of their ownership and possession by the deceased Uma Sood, renders open the conclusion that the mere fact of identification of Ex. P-13 and P-14 at the instance of PW-2 is insufficient to constrain a conclusion that both belonged to the deceased Uma Sood. Even their purported recovery from the shop/premises of accused No. 3, to whom they were purportedly sold by accused Nos. 1 and 2 cannot connect the accused in the commission of their theft at their instance, besides cannot link them in the murder of both the deceased, especially in the face of existence of a further fact in the deposition of PW-2 of hers omitting to identify the bangles Ex. P-15 to P-18 and rings Ex. P19 and P20 which omission facilitates a deduction from this Court that the aforesaid gold ornaments purportedly stolen by the accused from the premises of the deceased in course whereof they committed the murder of both the deceased and subsequently purportedly sold them to accused No. 3 have not been unflinchingly proved to have been owned and possessed by deceased Uma Sood nor belonged to her. For reiteration, in the face of absence of worthy and potent evidence portraying the ownership of Ex. P13 to P-20 by the deceased, as such, no conclusion can be formed that the gold items aforesaid were stolen by the accused from the premises of the deceased in course whereof they murdered both the deceased and thereafter they purportedly sold them to accused No. 3. The overwhelming conclusion which is hence warranted is that the accused neither visited the premises of the deceased nor committed any theft, nor to satiate their motive of theft. committed the murder of both the deceased. Even though, the prosecution further concerted while relying upon the testimony of Neeraj Juneja, PW-19 in whose presence the accused purportedly sold gold ornaments Ex. P-13 to Ex. P-20, weighing 68.500 grams to accused No.

3 for a sum of Rs. 60,000/-, whereas, their value was not less than 1.5 lacs, to clinch the fact of the accused having visited the premises of the deceased to commit theft in course whereof they committed the murder of the deceased, besides reliance is placed upon disclosure statement Ex. PW8/A made by accused Som Dutt qua the name of goldsmith to whom gold ornaments as purportedly stolen by them from the premises of the deceased were sold, in pursuance where of the aforesaid gold ornaments were seized under Memo Ex. PW9/A. However, the factum of efficacy of disclosure statement Ex. PW8/A purportedly made by accused Som Dutt, in pursuance whereof recovery of stolen gold ornaments, Ex. P13 to P-20 was effected at the instance of Som Dutt from the commercial premises/shop of accused No. 3, Satya Prakash stand denuded, in the face of the aforesaid discussion forthrightly pronouncing upon the factum of the demise of the deceased being not attributable to smothering or gagging of each of the deceased at the instance of the accused rather the demise being suicidal. Consequently, in case the accused had intended to commit theft or had allegedly committed the theft of the gold ornaments comprised in Ex. P-13 to Ex. P-20, in course thereof, in case of resistance posed by the deceased they naturally would have taken to inflict injuries on the persons of the respective deceased as a necessary precursor to theirs intending to dispense with or to eliminate both of them yet, there is no evidence portrayed in the post mortem reports comprised in Ex. PW35/B and Ex. PW35/D qua existence of any ante mortem injuries on the persons of each of the deceased, in communication of resistance as purportedly posed by the deceased to the act of the accused to commit theft and the accused having repulsed the resistance of the deceased by compatible show of strength connoted by theirs having inflicted injuries upon the persons of the deceased. More so, in the absence of the aforesaid material on record explicitly pronouncing upon the factum of the opinion comprised in Ex. PW35/E of the demise of the deceased being attributable to consumption of organo phosphorous substance and asphyxia which has been for the reasons afforded hereinabove concluded to be alone holding sway and command qua the cause of demise of the deceased and its dispelling the fact of the demise of the deceased being attributable to smothering or gagging, dispels as well as wholly negates the effect, if any, of recovery of Exts. P13 to P-20 from the commercial premises of accused No. 3, as also, the effect of the theft of gold ornaments belonging to the deceased and after their murder, theirs having been sold to the former by the accused. Moreover, even the deposition of PW-19 Neeraj Juneja, in whose presence, accused No. 3 paid a consideration of Rs. 60,000/- to accused Som Dutt for receiving gold ornaments Ex. P-13 to P-20 from the latter, is of no avail on the score of his not knowing accused No. 3 especially when no evidence exists portraying the fact of his having previously known accused No. 1 and 2 so as to render him empowered to identify them. It appears that the disclosure statement Ex. PW8/A is a wholly invented and a concocted piece of evidence and the recoveries of allegedly stolen gold ornaments Ex. P-13 to P-20 in pursuance to Ex. PW8/A is a wholly well engineered and ingenuous exercise on the part of the Investigating Officer to falsely implicate accused No. 1 and 2 as well as accused

No. 3. Besides, the reasons for rendering legally inefficacious, the recovery of Mobiles and sim card under recovery memos Ex. 11/A and Ex. PW5/A are obviously *pari materia* to the one as assigned and attributed by this Court for overcoming the evidentiary value of recovery of Ex. P-13 to P-20, as such, the recoveries of mobile and sim are also concluded to have ingeniously planted upon the accused by the prosecution in connivance with PW-11 Bhupinder.

20. The deposition of PW-16 Anurag Verma, who dropped both the accused, namely Som Dutt and Rakesh Kumar on his bike at a short distance from the site of occurrence is also pressed into service by the prosecution to clinch the guilt of the accused. Even if assuming that his testimony acquires credibility qua the fact as deposed by him of his having seen the accused at a short distance from the site of occurrence, yet does not, when he does not further depose in his testimony that he had seen the accused entering the site of occurrence, subsequent to his having dropped the accused on his bike at a short distance from the site of occurrence, constitute evidence of his having seen the accused entering the premises. In sequel, his testimony cannot carry any grain of truth in imputing an incriminatory role to the accused. Further more, the recovery of the gold ornaments Ex. P-13 to P-20 from the shop/commercial premises of accused No. 3 on his having purchased them from accused Nos. 1 and 2, for the aforesaid reasons is also concluded to have been ingenuously planted upon accused No. 3. Consequently, no offence is made out against accused No. 3.

21. For the foregoing reasons, both the appeals are allowed and the judgment of the learned trial Court is set aside. Consequently, all the accused, namely Som Dutt, Rakesh Kumar and Satya Prakash are acquitted of the offences for which they stand charged and convicted by the learned trial Court. They be set at liberty forthwith, if not, required in any other offence. Fine amount, if any, deposited by the accused be refunded to them forthwith.