

(2016) 06 SHI CK 0089

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 98 of 2008.

State of Himachal Pradesh - Appellant @HASH Rekha Devi and another

Date of Decision : 21-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, Section 302

Citation : (2016) ILRHP 2106

Hon'ble Judges : Sanjay Karol and Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr. V.S. Chauhan, Addl. A.G., with Mr. Vikram Thakur, Dy. A.G. and Mr. J.S. Guleria, Assistant A. G, for the Appellant; Mr. Vikas Rathore, Advocate, for the Respondent No. 1; Mr. Virender Singh Rathore, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J. - The present appeal has been filed by the State against judgment of acquittal dated 20.08.2007 passed by the Court of learned Additional Sessions Judge (1), Kangra at Dharamshala in Sessions Case No. 53-3/2005, whereby the learned trial Court has acquitted the accused of offence under Section 302 read with Section 120-B of the Indian Penal Code.

2. The case of the prosecution, in brief, was that accused Rekha was married to deceased Ram Singh in December, 2004. There was acrimony in the relationship between the deceased and the accused and matrimonial dispute had also been redressed by the Panchayat, wherein a compromise was also effected. However, two-three days after the compromise, deceased Ram Singh again filed a complaint against his wife in Gram Panchayat, Jakhara.

3. On the intervening night of 15/16.05.2015, Ram Singh died under suspicious circumstances. The matter was reported by accused Rekha Devi, wife of the deceased to her neighbour Shamsheer Singh that her husband had hanged himself from the ceiling of the house. On the basis of this information, the father and mother of the deceased went to her house and found Ram Singh hanging from the wooden plank (Karri) of the roof with a dupatta with his legs on the

ground. His tongue was under his teeth and blood was oozing out from his nose. The dupatta with which Ram Singh was hanging was cut with the help of a sickle and Ram Singh was laid on the bed and water was served to him with the hope that he may be still alive, however, by that time, he had already breathed his last.

4. Shamsher Singh informed Smt. Prem Kaur, Pradhan of Gram Panchayat, Jakhara about the death of Ram Singh, who further informed Incharge Police Post, Fatehpur about the said incident on telephone at about 11:15 p.m. ASI Yog Raj, Incharge Police Post, Fatehpur entered rapat No. 24 to this effect in the roznamcha register (Ex. PW18/A) and also informed SHO, Police Station, Jawali about the occurrence of the said incident and entry to this effect was also recorded vide rapat No. 25 in rapat roznamcha register at Police Station, Jawali (Ex. PW18/A). On the basis of these two rapats, ASI Yog Raj and SHO Jagdish Chand proceeded to the spot along with other police officials. At the spot, inquest papers Ex. PW23/B and Ex. PW23/C of the dead body were prepared and photographs Ex. PW4/A to Ex. PW4/G were also taken. The statement of the complainant Shamsher Singh Ex. PW1/A was recorded and on the basis of the said statement, FIR was initially registered against accused Rekha Devi, i.e. Ex. PW16/A. Application Ex. PW9/A was moved to Medical Officer, Civil Hospital, Nurpur for conducting post mortem examination of the deceased and accordingly, the post mortem was conducted vide report Ex. PW9/B.

5. During the course of investigation, it came to the notice of the police that accused Harnam Singh was having intimate relationship with accused Rekha and in fact both of them have connived together to do away with the life of deceased and to achieve this end, accused Harnam Singh arranged some sedatives and got the same administered to the deceased in a Coca Cola. After consuming the said Coca Cola, the deceased came under the influence of intoxicant and during this period, he was throttled and his body was thereafter hanged with dupatta with the karri of the roof of the house in order to concoct a story that the deceased in fact had committed suicide. On the basis of the said evidence, co-accused Harnam Singh was arrested.

6. During the course of investigation, accused Rekha Devi gave disclosure statement Ex. PW2/A to the police in the presence of Rattan Singh, Suresh Kumar and Surinder Kumar as to where the Coca Cola bottle was hidden and where the sedatives were kept in a piece of newspaper. On the basis of this statement, she led the police and witnesses to her house and got the sedatives (Ex. P7) as well as Coca Cola bottle (Ex. P9) recovered from the roof of her house.

7. After completion of the investigation, challan was filed in the Court and on the basis of the said challan, charges under Section 302 read with Section 120-B of the Indian Penal Code were framed against the accused, who pleaded not guilty and claimed to be tried.

8. Learned trial Court vide its judgment dated 20th August, 2007 acquitted the

accused for the commission of the offence alleged against them by holding that from the scrutiny of entire evidence on record, the only conclusion which can be drawn is this that the deceased had committed suicide and he had not been murdered by the accused as a result of criminal conspiracy.

9. Learned Additional Advocate General has submitted that the learned trial Court has erred in acquitting the accused of the offence with which they were charged. According to him, in the present case, on the basis of material produced on record, the prosecution has substantiated beyond any reasonable doubt that the deceased had in fact been murdered by the accused as a result of criminal conspiracy hatched by them and it was not a case of suicide. According to him, the findings of deceased having committed suicide returned by the learned trial Court were in fact perverse and not borne out from the records of the case. Learned Additional Advocate General has submitted that the learned trial Court has discarded the cogent and trustworthy testimony of prosecution witnesses for untenable reasons without appreciating that there was no reason to disbelieve the said testimony of the prosecution witnesses in the absence of any proof of enmity between the said witnesses and the accused. He also argued that the learned trial Court has not appreciated that both the accused had in fact been connected with the offence which was evident from the statement of PW-19. He has also argued that PW-11 to PW-13 had proved beyond reasonable doubt that Rekha Devi fled away from the spot and was caught by the villagers and that complaint was made against her by the accused. He has further argued that the factum of compromise having been entered into the deceased and the accused was also proved on record and PW-12 had also proved that Rekha Devi was caught and brought back to the spot and that Harnam Singh was identified by PW-12 in the light of the shop. Thus, according to him, all the circumstances stood proved connecting the accused with the commission of the offence, but the same had been ignored by the learned trial Court with no plausible explanation.

10. Mr. Chauhan further argued that the learned trial Court had erred in concluding that the disclosure statement of accused on the basis of which recovery was effected was not reliable. He also argued that the findings of the learned trial Court to the effect that FSL report and the testimony of doctor (PW-9) did not support the case of the prosecution were contrary to the contents of the same. He also argued that when the presence of accused Rekha Devi and deceased Harnam Singh was proved at the spot at the time of the incident, it was highly impossible for the deceased to have had committed the suicide and this important aspect of the matter has not been appreciated by the learned trial Court. Accordingly, Mr. Chauhan submitted that the findings so arrived at by the learned trial Court be set aside and the accused be convicted for the commission of offence for which they have been charged.

11. Mr. Vikas Rathore, learned counsel for respondent No. 1 and Mr. Virender Singh Rathore, learned counsel for respondent No. 2 have argued that there was no merit in the appeal filed by the State and in fact the learned trial Court on the

basis of the material produced before it by the prosecution had correctly concluded that the deceased had committed suicide and that the prosecution had miserably failed to prove its case that the deceased was murdered by the accused. According to the learned counsel for the respondents, there was no eye witness who had seen the commission of the alleged offence. Thus, it being a case of circumstantial evidence, the onus was very high upon the prosecution to have had proved all the links and circumstances connecting the accused with the commission of the alleged offence. In the present case, as the prosecution failed to establish on record by way of circumstantial evidence that the alleged offence had been committed by the accused, therefore, learned trial Court had rightly acquitted the accused of the offence alleged against them. Thus, learned counsel for the respondents submitted that the judgment passed by the learned trial Court warranted no interference and the appeal being without any merit be dismissed.

12. We have heard the learned counsel for the parties and also gone through the records of the case.

13. In order to substantiate its case, the prosecution examined 23 witnesses.

14. This being a case of circumstantial evidence as there is no eye witness who has seen the deceased being allegedly murdered by the accused, therefore, this Court has to evaluate and adjudicate as to whether by way of circumstantial evidence, the prosecution has been able to link the accused with the commission of offence.

15. During the course of arguments, learned Additional Advocate General has culled out the following circumstances connecting the accused with the commission of the offence:

"1. Marriage of the deceased with the accused.

2. Acrimony in the matrimonial relations of accused and the deceased.

3. Illicit relationship between accused Rekha Devi and Harnam Singh.

4. Death of deceased and recovery of his dead body.

5. Disclosure statement."

16. At this stage, it is relevant to take note of the judgment of the Hon'ble Supreme Court on circumstantial evidence in *Vijay Thakur v. State of Himachal Pradesh*, (2014) 14 SCC 609, relevant paras of which are quoted below:

"18. It is to be emphasised at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of

the accused person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

19. In *Mani v. State of Tamil Nadu*, (2008) 1 SCR 228, this Court made following pertinent observation on this very aspect:

"26. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

20. There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 in the following manner:

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

21. Likewise, in *Mustkeem alias Sirajudeen v. State of Rajasthan*, (2011) 11 SCC 724, this Court observed as under:

"24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185) "(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

It is settled position of law that suspicion, however strong, cannot take the character of proof.

22. We, therefore, have no hesitation in allowing these appeals and setting aside the conviction and sentence of the two appellants under Section 302 read with Section 34 of the Penal Code. We order accordingly. The appellants are directed to be released from jail forthwith, if not required in any other case."

17. Thus, the salient points which have been carved out by the Hon'ble Supreme Court in the case of circumstantial evidence, on the basis of which the guilt of the accused can be brought home are as under:

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(vii) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

18. The Hon'ble Supreme Court in Sangili alias Sanganathan v. State of Tamil Nadu, (2014) 10 SCC 264 has held as under:

"15. To sum up what is discussed above, it is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In the present case, we find, in the first instance, that the appellant was roped in with suspicion that it was a case of triangular love and since he also loved PW-3, he eliminated the deceased when he found that the deceased and PW-3 are in love with each other. However, we are of the view that this motive has not been proved. The evidence of last seen is also not established. Father of the deceased only said

that the deceased had received a call and after receiving that call he left the house. In his deposition, he admitted that he had not seen the appellant before and he did not recognise his voice either. Therefore, he was unable to say as to whether the phone call received was that of the appellant. Proceeding further, we find that the deceased was not seen by anybody after he left the house. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

16. In *Mani v. State of Tamil Nadu*, (2009) 17 SCC 273, this Court made following pertinent observation on this very aspect:

"26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 in the following manner:

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

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(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

(emphasis supplied)

18. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant and the appellant is entitled to get the benefit of doubt. We, therefore, allow the appeal and set-aside the conviction and sentence of the appellant. The appellant be set at liberty unless required in any other case."

19. In these circumstances because it is a case of circumstantial evidence, this Court has to satisfy its judicial conscience as to whether by way of circumstantial evidence produced on record by the prosecution, it has been able to link the commission of the offence with the accused or not.

20. We will test all the circumstances vis-a-vis material produced on record regarding each circumstance by the State separately.

1. Marriage of the deceased with the accused:

21. A perusal of the statement made by accused Rekha Devi under Section 313 of the Criminal Procedure Code makes it evident that the accused was married with deceased Ram Singh in the Month of December, 2004. Thus, this circumstance stands proved that the accused and the deceased were married to each other in December, 2004.

2. Acrimony in the matrimonial relations of accused and the deceased:

22. PW-1 Shamsheer Singh in his statement has mentioned in the Court that the accused and the deceased were married in the year 2004. However, they were not having good relations with each other and deceased Ram Singh had also filed a complaint with Pradhan Gram Panchayat and also at Police Post, Fatehpur about two days prior to the incident and a compromise was also arrived at between deceased Ram Singh and accused Rekha Devi.

23. PW-10 HC Satpal has stated that he handed over the complaint of deceased Ram Singh Ex. PW10/A against his wife accused Rekha Devi along with compromise deed Ex. PW10/B and summons issued by Incharge, Police Post, Fatehpur Ex. PW10/C, which both deceased and accused Rekha Devi had signed. He has also deposed that complaint Ex. PW10/A was forwarded to him by

Pradhan, Gram Panchayat, Jakhara and he (PW-10) summoned both the deceased and accused Rekha Devi to the Police Post on 13.05.2005. On the said date, respectable and responsible persons of the locality also came to the Police Chowki/Police Post and on the persuasion of the respectable persons, dispute between Rekha Devi and deceased were reconciled.

24. Similarly, PW-11 Smt. Prem Kaur, Pradhan Gram Panchayat, Jakhara has deposed that on 07.05.2005, deceased Ram Singh had filed a complaint before her alleging that accused Rekha Devi used to beat him and was not obeying him. It was also stated that even prior to this, the deceased made oral complaints on two occasions. On the written complaint, she visited the house of Ram Singh along with Ward Panch and made inquiries. Accused Rekha Devi told her that she does not want to live in the house and she got up from there and left the house. She further stated that she stayed in the house for about 10 minutes, but during the said period, Rekha Devi did not turn up. Then, on the same day, Ram Singh again visited her house along with a complaint addressed to SHO and after her endorsement on the same, she referred the same to the police, copy of which was Ex. PW10/A. Police summoned her and some other residents of the village on 15.03.2005, on which date accused Rekha Devi was also present at Police Post, Fatehpur along with her father, Pradhan of the Gram Panchayat and uncle of accused Rekha Devi were also accompanying them. Deceased Ram Singh was accompanied by his villagers on the said date. Both of them were made to enter into a compromise.

25. The testimonies of these three witnesses leads to only one conclusion and that is the existence of acrimony in the matrimonial relation of the accused and the deceased.

3. Illicit relationship between accused Rekha Devi and Harnam Singh:

26. According to the prosecution, Ex. PW-10/A and Ex. PW-10/B are the two documents which are pointers towards the factum of there being illicit relationship between accused Rekha Devi and Harnam Singh. The contention of the State is that it was mentioned in the complaint by the deceased inter alia that accused Rekha Devi used to leave the house of the deceased and she used to indulge in wrong activities. Similarly, a perusal of agreement/compromise Ex. PW-10/B would demonstrate that the compromise arrived at between the deceased and the accused inter alia was to the effect that accused Rekha @ Sharda Devi will not leave her matrimonial house without informing her husband and that in case she does so, then Ram Singh will have the right to lodge complaint in this regard to his Pradhan. Besides this, no other material has been referred to by the State to establish this circumstance.

27. In our considered view, it cannot be inferred beyond reasonable doubt that there was any illicit relationship between accused Rekha Devi and Harnam Singh on the basis of the complaint Ex. PW-10/A and compromise Ex. PW-10/B. At the most, these two documents demonstrate that there was acrimony in the

matrimonial relations between the deceased and the accused, but it cannot be inferred from the contents of these two documents that the reason behind the said acrimony was alleged illicit relationship between accused Rekha Devi and Harnam Singh.

4. Death of deceased and recovery of his dead body:

28. PW-1 Shamsheer Singh has stated that on 15.05.2005, it was Sunday and he was in his house and at about 10:30 p.m., he had gone to sleep, when accused Rekha Devi came to his house and informed that her husband had hanged himself. On this, he along with his father went to the house of the deceased and saw Ram Singh hanging from the plank of the roof of his house. His nose was bleeding and his tongue had come out from his mouth and his feet were on the floor of the house and his neck tied with a yellow coloured dupatta. He has further stated that he found the body of the deceased warm when he touched him and in order to save him, he tried to open the knot of the dupatta, but he could not succeed in doing so, therefore, he cut the dupatta with the help of a sickle and laid Ram Singh on the bed. Thereafter, he untied the knot of the dupatta around his neck. He tried to serve Ram Singh water, however, by that time he was dead. In the meantime, other villagers also reached at the spot and Pradhan Prem Kaur was informed telephonically about the incident, who reached at the spot at around 11:30 p.m. Ward Panch also accompanied her. He further deposed that when said Pradhan reached at the spot, accused Rekha Devi fled away from the spot. However, Jarnail Singh and Nirmal chased her, but they found that accused Rekha Devi had been caught by Khem Raj and they brought Rekha Devi back to the spot. He has further deposed that on the night of incident, Rekha Devi and the deceased alone were present, whereas the mother of the deceased had gone to Beas. He has also deposed that on that day, both of them were present in the house. He has also stated that when he entered the house of the deceased, he saw some scars on the face of the deceased. He also deposed that there were injury marks on the face and neck of the deceased. Police was intimidated by the Pradhan, who reached the spot at around 11:35/11:40 p.m.

29. Dr. Raman Sharma has entered the witness box as PW-9. He conducted the post mortem of Ram Singh on 16.05.2005 at around 11:25 a.m. According to him, the cause of death was asphyxia due to strangulation. He has also stated that in his opinion with regard to the ligature mark injury on the neck of the deceased, said injury was ante mortem in nature and the same could have been possible on account of throttling by some person. He also deposed that this injury can also be possible if neck of the person is tied with dupatta and throttled with the help of dupatta. He also deposed it to be correct that in the report of Chemical Examiner Ex. PA, there was no evidence of any poison or intoxicant in the viscera. He has also admitted that there was no evidence of sign of struggle, scratches, nail marks, fatal injuries or poisoning. He also admitted it to be correct that intoxication which would result from having given or taken alprazolam

was not present in the viscera of the deceased. He also admitted it to be correct that in the case of throttling, there should be scratch marks, nail marks and marks of struggle and mark of fatal injuries which were not existing in the present case. Thus, from the evidence of PW-1 and PW-10, it is evident that the dead body of the deceased was found hanging on the fateful night from the karri of his house and at that relevant time, the deceased was alone in his house with his wife accused Rekha Devi. Further, according to PW-9, the cause of death was asphyxia and he clearly deposed that there was no injury on the body of the deceased which normally results when a person is strangulated. He also admitted that there was no evidence of any poison or intoxicant in the viscera. Thus, the prosecution has failed to prove beyond reasonable doubt that the death of the deceased was not suicidal but an act of homicide.

5. Disclosure statement:

30. Ex. PW2/A is the copy of disclosure statement made by accused Rekha Devi. This disclosure statement is dated 21.05.2005. The same has been made in the presence of Shri Rattan Singh, Shri Suresh Kumar and Shri Surinder Kumar. The same has also been signed by accused Rekha Devi. It is mentioned in this disclosure statement that the accused had kept a Coca Cola bottle and "puria" of newspaper piece in her bed, about which only she knew and that she can have the same recovered. This statement was recorded under Section 27 of the Indian Evidence Act. On the basis of the said statement, recovery was made vide recovery memo Ex. PW-2/C in the presence of witnesses Sh. Rattan Singh, Sh. Suresh Kumar and Sh. Surinder Kumar respectively on 21.05.2005 itself.

31. According to the prosecution, the disclosure statement was made in the presence of S/Sh. Rattan Singh, Suresh Kumar and Surinder Kumar. Out of these three persons, Sh. Suresh Kumar and Sh. Surinder Kumar have not been examined by the prosecution. Sh. Rattan Singh has deposed as PW-2 that in the year 2005, he was Ward Panch of village Jakhara. On 21.05.2005, he along with one Suresh went to SHO, Police Station Jawali to ascertain the progress of the present case. He met the SHO where one Surinder was also present. SHO called accused Rekha Devi in his room and she was brought there accompanied by a lady Constable. On interrogation, accused Rekha Devi disclosed the SHO that she has concealed one bottle of Coca Cola and one puria in a room of which only she has knowledge. Accordingly, SHO recorded her disclosure statement Ex. PW2/A, which was signed by him as well as Suresh and Surinder. Thereafter, he, Suresh and Surinder were taken by the police in two vehicles to the house of accused Rekha Devi. Accused Rekha Devi led them towards her room and produced one puria from gents shoes which were lying beneath the shelf. Puria was opened by the SHO, which was found containing small crystals of cream and white colours. SHO kept the said puria in a small plastic box which was thereafter sealed. Thereafter, accused produced one Coca Cola bottle which was lying beneath the Almirah. Police inspected the spot and took the bottle into possession and sealed it. In his cross-examination, he admitted that in the present case, police

apprehended some persons who were subsequently released. He also admitted it to be correct that these persons were earlier apprehended and released by the police after interrogating them and they were also beaten up by the police. However, he subsequently stated that he does not know as to whether they were beaten up by the police. He was also confronted with his statement made before the police where as he deposed before the Court was not recorded.

32. We have gone through the contents of the disclosure statement as well as the statement by PW-2. Incidentally, according to the prosecution, this disclosure statement was made by accused Rekha Devi in front of three witnesses. Out of these three witnesses, only one has been produced in the witness box, i.e. PW-2, whereas remaining two witnesses have not been produced. Even the version of PW-2 is not convincing and trustworthy. According to him, on the date when the disclosure statement was made, he went to the Police Station along with Suresh to inquire about the progress of the case. There, accused Rekha Devi was called by SHO for interrogation, who during the course of interrogation stated that she wants to make a disclosure statement. The version of PW-2 does not inspire any confidence, especially in view of the fact that two other alleged witnesses to the disclosure statement have not been examined by the prosecution and further the story as put forward by PW-2 does not sounds to be prudent, i.e. he went to the police to inquire about the progress of the case along with Suresh.

33. We are at pains to appreciate as to what was the intent of prosecution in obtaining the said disclosure statement and discovery of Coca Cola bottle and puria containing certain tablets etc., because the fact of the matter remains that the post mortem report and the statement of PW-9 do not leave any iota of doubt that the cause of death of deceased is strangulation and he has not died on account of poisoning etc. Thus, this circumstance also does not link the accused with the commission of the alleged crime by them.

34. If we take all these circumstances together, then the only conclusion which can be drawn is this that the prosecution though has been able to establish that there was acrimony in the matrimonial relations between the deceased and the accused, but it has neither been able to establish that there was illicit relationship between accused Rekha Devi and Harnam Singh nor it has established that the deceased did not commit suicide but he was murdered by accused Rekha Devi and Harnam Singh.

35. We reiterate that suspicion no matter howsoever strong cannot be a substitute of proof. In the present case, there is no cogent and reliable proof on record that the petitioners are guilty of offence under Section 302 read with Section 120-B of the Indian Penal Code neither the prosecution has been able to substantiate that any conspiracy was hatched between accused Rekha Devi and Harnam Singh to do away with the deceased. The prosecution has been able to prove that accused Harnam Singh had any motive to kill the deceased, especially keeping in view the fact that the prosecution could not establish illicit relations between accused Rekha Devi and Harnam Singh.

36. In view of what we have stated above, we do not find any infirmity with the judgment which has been passed by the learned trial Court acquitting the accused of the charges levelled against them. It cannot be said that the judgment passed by the learned trial Court is either perverse or that the prosecution had proved its case beyond reasonable doubt against the accused, but the learned trial Court has acquitted them. According to us, the prosecution has not been able to prove its case beyond reasonable doubt. Therefore, the judgment passed by the learned trial Court is up-held by us and the present appeal is accordingly dismissed being devoid any merit.