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**(1997) 10 SC CK 0034**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 506 of 1989**

State of Himachal Pradesh

APPELLANT

Vs

Vilas Maruti Sutar

RESPONDENT

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**Date of Decision : 24-10-1997**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** AIR 1998 SC 230 : (1997) 2 ALD(Cri) 877 : (1998) 1 ALT(Cri) 52 : (1998) CriLJ 387 : (1997) 8 JT 614 : (1997) 6 SCALE 590

**Hon'ble Judges :** Sujata V. Manohar, J; M. M. Punchhi, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. This is an appeal filed by the State of Himachal Pradesh against the judgment and order of the High Court of Himachal Pradesh in appeal acquitting the respondent of charge u/s 302 of the Indian Penal Code. The Sessions Judge, Solan and Sirmur Districts in Himachal Pradesh had convicted the respondent u/s 302 of the Indian Penal Code and sentenced him to imprisonment for life. However, in respect of charges u/s 201 of the Indian Penal Code the respondent who was the accused, had been given the benefit of doubt. The High Court, however, reversed the findings of the Sessions Court regarding charge u/s 302 and acquitted the respondent.

2. The prosecution story, briefly stated, is as follows:

3. The accused (respondent) was in the service of the Indian Army. At the relevant time, he was serving in the unit of 12th Battalion of Maratha Light Infantry at Solan in Himachal Pradesh. He was allotted a family quarter where he was living with his wife Malu Tai since 29th of January, 1983. The accused was granted annual leave from 6th of June, 1983 till 10th of August, 1983. He was also granted a free travelling warrant by rail from Solan to Kolhapur on 3rd of June, 1983. The accused is a resident of village Hiralgey, Police State Gadhinglaj, Kolhapur District, State of Maharashtra. The accused also obtained a concession

travelling warrant for Malu Tai on 9th of June 1983. However, the accused left Solan and boarded the train by himself and reached his village in Maharashtra. Three or four days later he went to see Shanta Bai, the mother of Malu Tai. When Shanta Bai enquired about Malu Tai and asked why she had not accompanied the accused, the accused told Shanta Bai that Malu Tai had got down from the train at Delhi and said that she would come later. The accused demanded some utensils from Shanti Bai's house and despite her protests, took away his bicycle which was living at Shanta Bai's house.

4. Getting suspicious, Shanta Bai made a complaint on 17th of June, 1983 at Gadhinglaj to the effect that she was suspecting foul play on the part of the accused in regard to her daughter. In the meanwhile, some Railway Gangmen while on railway track patrol near Railway Station Koti in Himachal Pradesh found a gunny-bag below the railway track. The gunny-bag was emitting a foul smell. The railway police was informed. The bag was opened and it was found to contain the body of a woman. Certain articles were also found in the bag. On post-mortem examination, the body was found in an advanced stage of decomposition. The doctor noted the various clothes on the body including currency notes of Rs. 405/-. There were depressed fractures on the right parietal bone and frontal bone on the right side. Viscera was preserved and sent. for chemical examination. On receipt of the chemical examiner's report, the medical witness opined that the cause of death was organo phosphorus poisoning. The period between death and post-mortem examination-was estimated at 2 to 5 days. A case was registered u/s 302 of the Indian Penal Code.

5. Meanwhile, Maharashtra Police, on Shanta Bai's complaint questioned the accused and sent the complaint of Shanta Bai through a Head-Constable to Simla which was later handed over to the railway police.

6. The railway police then carried out a search in the house of the accused at Hiralgey in Maharashtra. It was also found that during the period of leave the accused had contracted a marriage with one Ambu Bai of Village Bajra, Post Gadhinglaj who was the younger sister of the wife of the accused's elder brother. The police also searched the house of Ambu Bai's parents. From these searches, the police recovered sarees and bluses, some of which, according to Shanta Bai, belonged to the deceased Malu Tai. Shanta Bai identified these clothes as well as the clothes found on the dead body which was detected by the railway police, in an identification parade, as belonging to her daughter Malu Tai.

7. The accused was arrested on 6th September, 1983. While in police custody he made a disclosure statement on September 13, 1983 that he had kept some ornaments of Malu Tai at the residence of Ambu Bai's parents in Village Bajra hidden in the ceiling. The accused got the ornaments recovered before the police. Shanta Bai identified these ornaments at an identification parade as belonging to her deceased daughter Malu Tai. On the above evidence, the accused was sent up for trial under Sections 302 and 201 of the Indian Penal Code. The Sessions Judge by his judgment and order dated 30th of April, 1984

held the accused guilty u/s 302 of the Indian Penal Code but acquitted him in respect of charge u/s 201 of the Indian Penal Code. He was sentenced to life imprisonment.

8. The accused was convicted on the basis of circumstantial evidence. Although the prosecution did not try to prove any motive for the crime, the trial court said that the suggestions which were put forward to witnesses for the prosecution on behalf of the defence clearly brought out the motive, namely, that the deceased Malu tai was a woman of loose character and she had aroused the suspicions of the accused regarding her fidelity. He had, therefore, committed the murder of Malu Tai in a pre-planned manner. The Sessions Judge took into account the following circumstances:

1. The accused, although he had obtained a travel concession warrant for Malu Tai from the military authority, travelled alone. He also did not surrender the travel concession warrant of his wife when it remained unutilised by his wife.

2. Wrong information was given by the accused to Shanta Bai that Malu Tai had got down from the train at New Delhi when she was coming with him with a promise to complete her journey. In fact he had boarded the train alone.

3. The accused also made no efforts to trace the whereabouts of Malu Tai during his long leave nor did he lodge a report anywhere.

4. During the period of his leave he entered into a marriage with Ambu Bai.

5. Ornaments of Malu Tai were recovered at the instance of the accused from the parental house of his new wife Ambu Bai.

6. The identification of the clothes found on the dead body as those of Malu Tai was made by her mother Shanta Bai. The clothes which were found at the house of the accused and also at the parental house of his new wife were identified by Shanti Bai as belonging to Malu Tai.

9. The Sessions Judge said that if Malu Tai was alive when accused boarded the train, there would have been no occasion for the accused to bring with him the ornaments and clothes of Malu Tai and give them to his new wife Ambu Bai. The High Court, however, has set aside the conviction. The High Court has noted the statement of the accused upon his examination u/s 313 of the Criminal Procedure Code. In the statement he admitted that he and Malu Tai were living as husband and wife at Solan since January 1983. He also stated that he had gone to his native place on annual leave on 9th of June, 1983 and soon thereafter he had gone to the house of Shanta Bai and met her there. He denied having thrown a gunny bag from the running train. He denied having contracted a second marriage with Ambu Bai and denied having made any extra-judicial confession to PW. 17 Shinde. His explanation for going home alone was that when he was due to leave Solan on annual leave, Malu Tai insisted that she should visit Simla before proceeding to the native place. Therefore, he left alone from Solan for his native place. According to the statement, on 9th of June, 1983

he reached his home from his office at 4 p.m. with a truck to carry him and his luggage to the railway station. On his return he did not find Malu Tai in his quarter. He, therefore, picked up two trunks and one hand-bag and put them in the truck and went to the railway station. He admitted having procured railway concession warrant for Malu Tai from the military authority in June, 1983. But he denied having travelled together with her. The High Court has doubted the circumstantial evidence in respect of the visit of the accused to Shanta Bai a few days after coming from Solan. The High Court has said that if the accused had any guilty conscience he would not have gone and met Shanta Bai after his arrival and he would not have behaved in the manner he is said to have done according to Shanta Bai. According to the High Court, he would have tried to keep Shanta Bai in good humour. The High Court has also doubted the evidence of Shanta Bai to the effect that the accused told her that Malu Tai had got down from the train at Delhi. From the deposition of Shanta Bai it is clear that she has given a very categorical statement to the effect that when she enquired from the accused why he had not brought Malu Tai when both were supposed to come together to the native place, the accused told her that Malu Tai had got down from the train at Delhi. Even in cross-examination she has reiterated this story and she has not been shaken. She has denied the suggestion that the accused told her that he had started alone from Solan. We fail to see how the High Court could have doubted this part of her testimony. The doubt is based entirely on conjectures as to how the accused ought to have behaved according to the High Court.

10. The High Court has also doubted the second marriage of the accused with Ambu Bai despite the second marriage being proved with the help of entries in the marriage register of the village of Ambu Bai's parents. According to the High Court, these entries should have been made in the register of the village of the accused. We fail to understand this reasoning of the High Court. If the marriage had taken place in the village of Ambu Bai's parents which is normal since the marriage normally takes place at the wife's parents' village, the entry can only be found as it was found in the register of the village of the wife's parents. The second marriage of the accused while he was on leave is a very telling circumstance indicating that the accused was aware of having done away with Malu Tai. A further telling circumstance is the discovery of Malu Tai's ornaments from the house of Ambu Bai's parents. The High Court has again doubted this evidence saying that the accused would not have kept these ornaments hidden at the house of Ambu Bai's parents. This disbelief is also based on pure conjectures. The High Court has also doubted the identification of these ornaments by saying that if these ornaments were mixed up with new ornaments they would be easy to identify. The High Court has ignored the entire evidence given by Shanti Bai in connection with the discovery of these ornaments which she identified as the ornaments of Malu Tai. These ornaments which consist of a Mangalsutra, gold tops, silver "pajab" and silver "challas", were got made by Shanta Bai and gifted to her only daughter Malu Tai. Mangalsutra is normally

always worn around the neck by married women of Maharashtra and it is not kept in an almirah or at any other place in the house. It is continuously worn. We find it difficult to see how the accused came by the Mangalsutra and other personal ornaments of Malu Tai if she was alive and why he brought them with him to his native place. This aspect of the matter has been totally ignored by the High Court.

11. The other important circumstance of identification of the dead body of Malu Tai by Shanta Bai has also been doubted by the High Court. Shanta Bai has, in very clear terms in her testimony, explained her identification of the clothes which were found on the dead body as those of Malu Tai. She has stated that the saree and blouse which Malu Tai was wearing had been gifted by Shanta Bai to Malu Tai and that she had purchased these clothes from a "feriwalla" at her residence. Some of the other clothes of Malu Tai which have been found from Ambu Bai have also been identified by Shanta Bai. Out of these, the saree was purchased from a "feriwalla" at Shanta Bai's residence by the accused. If she has identified these clothes, it is difficult to see how her testimony can be doubted. The High Court has doubted her testimony on the basis that she has not seen her daughter since January, 1983. Therefore, the High Court felt that she could not have identified Malu Tai's clothes in June, 1983. But if these clothes were purchased by Shanta Bai or were purchased in her presence and she remembers them, there is nothing wrong with her identification of these clothes. The entire judgment of the High Court is based on doubts with regard to all these crucial incriminating circumstances. The doubts raised by the High Court are based on pure conjectures and they are in the teeth of clear and convincing testimony which is recorded before the Sessions Judge. The fact that the accused gave wrong and misleading statement before Shanta Bai, the fact that he entered into a second marriage during his period of leave and the fact that Malu Tai's ornaments were found at the instance of the accused in the house of his second wife's parents are very telling circumstances. Some of the clothes of Malu Tai being discovered from his new wife/her parents' house is also a very telling wife/her parents' house is also a very telling circumstance. The discovery of a gunny bag along the railway track of the train from Solan to Delhi within a few days of the accused travelling along that route is also a telling circumstance. The identity of the dead body, in our view, has been established from the identification of the clothes of the dead body. The fact that the accused boarded the train with two trunks and one hand bag is also significant in the context of the discovery of this dead body. That the death occurred on account of poisoning has also been established. The High Court has also doubted the motive. The trial court has rightly relied upon the suggestions put in cross-examination by defence to the effect that Malu Tai was of a loose character as indicating a possible motive. But even otherwise looking to the entire chain of circumstances, the Sessions Court was justified in convicting the accused u/s 302 of the Indian Penal Code.

12. Accordingly we allow the appeal, restore the order of the Sessions Court and

set aside the order of the High Court.