

(2008) 08 KL CK 0031

In the High Court Of Kerala

Case No : Criminal Appeal No. 908 of 2004 and Criminal R.P. No. 171 of 2004

State of Kerala

APPELLANT

Vs

Babu

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Evidence Act, 1872 — Section 106, 114, 27
Penal Code, 1860 (IPC) — Section 302
Sea Customs Act, 1878 — Section 167, 178A

Citation : (2008) 3 ILR (Ker) 527 : (2008) 3 KLJ 130

Hon'ble Judges : M.C. Hari Rani, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : S.U. Nazar, PP, Jai George, N.K. Unnikrishnan and S. Rajeev, for the Appellant; P. Vijaya Bhanu, Prasun S. and P.M. Rafiq, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.

Crl. Appeal No. 908/2004:

1. This is an appeal filed by the State, feeling aggrieved by the acquittal of the respondent, who was the accused in S.C. No. 242/2001 of the Sessions Court, Thrissur. The accused/respondent was charge-sheeted for murdering his wife, giving her sodium cyanide masquerading it as ayurvedic contraceptive powder. But, the trial court disbelieved the case of the prosecution and took the view that it may be a case of suicide.

2. The brief facts of the case are the following: Ms. Sweety was a beautiful young girl aged about 19 years. Her marriage with Mr. Babu, the accused took place on 15-5-2000. The accused was a post-graduate and was an employee of Alukkas Jewellery. At the relevant time, he was working in one of the showrooms of the said Jewellery in the Gulf. The deceased was the eldest of the three daughters of

PW1, who was working as a Welder in the Cochin Shipyard. PW9, the mother of the deceased was a house wife. The accused was not having any residential house of his own. So, the couple after the marriage on 15.5.2000, stayed in the bridegroom's brother's house at Ollur. In connection with the marriage, there was a reception in the house of the deceased on 17(sic).2000. They stayed there for two days. Later, on 19.5.2000, they went to Kozhikode and stayed in the house of PW10 Benny, who was a close friend of the accused, up to 21.5.2000 and returned to the house of the deceased on 22.5.2000. Benny's marriage with Seethal was scheduled to be held on 31.5.2000. To attend the same, they went to Kozhikode again on 30.5.2000. It was a civil marriage and after attending the marriage, they returned to the house of the deceased at Chalakudy at 4 p.m. on 1.6.2000. Leaving Sweety in her house, the accused went away, allegedly for taking his sister to Amala Hospital, where his mother underwent an operation for cancer and was convalescing. He returned to Sweety's house by about 10.30 p.m. on the said date. Sweety was found lying unconscious in her room, which was locked from inside. The door was opened by using force and she was taken to the Government Hospital, Chalakudy, where she was declared dead by the doctor. PW 1, the father of the deceased lodged the information regarding her unnatural death at 7 a.m. on 2.6.2000. The S.I. of Police registered Crime No. 242/2000 of Chalakudy Police Station. The inquest was conducted on the very same day. The post-mortem examination was held on 3.6.2000 and thereafter the deceased was buried in the afternoon on the said date.

3. Initially, everyone thought that it was a case of suicide and everyone viewed the accused with suspicion, as the person responsible for her committing suicide. The accused and the relatives of the deceased were questioned by the police. The S.I. of Police was in charge of the investigation up to 4.6.2000. Since there was a public outcry regarding the investigation of the crime, PW21, the Dy. Superintendent of Police took over the investigation of the case. Later, during the investigation, information was received by the police that the accused attempted to procure cyanide. Thereafter the accused was arrested on 26.6.2000. He confessed to his guilt and based on his confession statement, the police along with the accused came to the shop of PW7, who was dealing in sodium cyanide also. As per the statement of PW7, the accused procured one kilogram of sodium cyanide from his shop, between 25.5.2000 and 27.5.2000. The post-mortem report showed that the deceased died of cyanide poison. From the statement of PW9, it was found that poison was given to the deceased under the cover of giving ayurvedic contraceptive medicine. So, the accused was charge-sheeted for the offence u/s 302 of the I.P.C. It was PW21, who questioned the witnesses, completed the investigation and laid the charge before the Judicial First Class Magistrate, Chalakudy. The learned Magistrate as per the committal proceedings No. 37/2001, committed the case for trial by the Sessions Court.

4. The accused pleaded not guilty to the charge of murder framed against him by the learned Sessions Judge. From the side of the prosecution P.Ws. 1 to 21 were examined and Exts.P 1 to P32 were marked. Material objects 1 to 11 were

produced. During the cross-examination of the witnesses, Exts.D 1 to D8 were marked, which were the contradictions in the depositions of P. Ws.3,9 and 10 with reference to their statements recorded u/s 161 of the Cr.P.C. The accused was questioned u/s 313 of the Cr.P.C. No witness was examined from the side of the defence. The learned Sessions Judge disbelieved the case of the prosecution and found the accused not guilty and acquitted him. Aggrieved by the same, the State has come up in appeal. The father of the deceased (PW1) has also filed Crl.R.P. No. 171/2004, challenging the judgment of the learned Sessions Judge.

5. We heard Sri. Jai George, learned Public Prosecutor for the appellant/State. We have also had the benefit of hearing Sri. N.K. Unnikrishnan, learned Counsel who appeared for the petitioner in the connected revision petition. The learned Public Prosecutor pointed out that the appreciation of the evidence made by the learned Sessions Judge is vitiated by many illegalities. On some points, the conclusions of the trial court are perverse and therefore, this Court may re-appreciate the entire evidence on record and come to its own conclusions. The learned Public Prosecutor also pointed out that going by the circumstances proved in this case, the possibility of suicide has to be ruled out. By medical evidence, it is proved beyond doubt that the deceased died of cyanide poison. It is impossible for the newlywed bride, who was in the company of her husband after the marriage, to procure cyanide poison. The evidence on record would show that the accused had tried to procure cyanide and finally he succeeded in getting it from PW7. The appreciation of evidence on this point made by the learned Sessions Judge was perverse and there was no reason to disbelieve the versions of the witnesses, spoken to on the above point. The accused was unhappy with the deceased for her non-co-operation for carnal intercourse. This is proved by the evidence of PW10 and his evidence has been disbelieved by the learned Sessions Judge without any justification. The deceased was made to take the poison along with the ayurvedic contraceptive powder given by him. This is clear from the evidence of PW9, the mother of the deceased. On the fateful day, the accused telephoned his wife thrice to enquire whether she has taken the medicine given by him. Her evidence has also been disbelieved on flimsy grounds, it is submitted. Therefore, all the circumstances necessary to enter the finding of guilt against the accused have been proved by the prosecution. So, the learned Public Prosecutor prayed for reversing the judgment of the learned Session Judge and to convict the accused. He relied on the decision of the Apex Court in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, and brought to our notice the principles governing appeal against acquittal. The learned Public Prosecutor also relied on the decision in Saji v. State of Kerala 2007 (3) KLT 151, concerning the adequacy of circumstantial evidence for sustaining a conviction. On the question of proof of motive, the learned Public Prosecutor supported his arguments, relying on the decisions reported in State of Himachal Pradesh Vs. Jeet Singh, , State of Karnataka v. M.N. Ramdas 2003 SCC (Cri) 134 and Sathyanesan v. State of Kerala 1984 KLT 774. To support the argument that recovery u/s 27 of the Evidence Act can be not only of material

objects, but also mental fact, the learned Public Prosecutor relied on the decision in *Amitsingh Bhikamsing Thakur Vs. State of Maharashtra*, . He also pointed out that u/s 313 of the Cr.P.C., the accused has given a statement, which is inherently improbable. The same will act as a link in the case of the prosecution against the accused. The learned Counsel Sri. N.K. Unnikrishnan supported the above submissions of the learned Public Prosecutor.

6. Sri. P. Vijaya Bhanu, who appeared for the respondent/accused, fully supported the reasons and conclusions of the learned Sessions Judge. He pointed out that the trial court has rightly disbelieved the versions of PWs. 4, 5, 7 and 12, concerning the procurement of cyanide poison by the accused. According to the learned Counsel, the accused could have collected cyanide, if he wanted, from the workshop of Alukkas Jewellery. The learned Counsel also pointed out that from the room where the deceased was found unconscious, no ayurvedic powder was detected. The accused, according to the prosecution, purchased one kilogram of cyanide. But, the balance cyanide purchased by him is not detected. The computer details of the public telephone were not produced, to show that calls from that booth were made by the accused to the telephone in the house of the deceased. The computer details were withheld, as they would have been adverse to the prosecution. The learned Counsel for the respondent finally pointed out that going by the principle laid down by the Apex Court regarding appeal against acquittal, this is not a fit case for interference by this Court, in exercise of its appellate power.

7. Going by the judgment under appeal, we feel that the appreciation of evidence made by the learned Sessions Judge on many points was perverse and therefore, this is a fit case where we should re-appreciate the entire evidence on record and draw our own conclusions on them. We will give the reasons for taking such a view later, while dealing with the relevant points.

8. PW1 is the father of the deceased. He has deposed that he is working as a Welder in the Cochin Shipyard. The marriage of his daughter was solemnized on 15.5.2000 in Koodappuzha Church. At that time, Sweety was a second year student of B.Com. The bridegroom was not having any residential house of his own. Therefore, he was residing with his elder brother and also in the house of the bride, after the marriage. As per the information given by his wife PW9, the accused along with the deceased returned from Kozhikode on 1.6.2000 by 4 p.m. He, after the work in the Shipyard, reached the house at 10.30 p.m. on the said date. His wife and children were there, when he returned from work. After 15 minutes, the accused came there. His wife PW9 prepared a tea for the accused. Since it was raining, the accused closed the door and windows of the sit-out. He gave chocolate sweets to the younger daughters. At that time, Sweety was in her room. Since she did not come out, PW91 went and called her by knocking at the door of the room in which Sweety was sleeping. Since there was no response, the window pane on the southern side of the room was broken and it was found that Sweety was lying on the floor near the cot. He poured some water (on her)

through the window. The same had no effect on Sweety. PW9 pushed open the door using a lever. Though Sweety was shaken by her, she did not respond. So, water was sprinkled on her face. It was found that vomitus was lying on the floor. PW1 went out and brought an autorickshaw. The younger daughter Simi tried to massage on the chest of Sweety and give artificial respiration to her. But, the accused restrained her. Sweety was taken in the autorickshaw to the hospital by PW1. The accused also accompanied him. While going to the Government Hospital, Chalakudy, the accused advised to take her to Thrissur. The doctor who examined her in the hospital pronounced that she was dead. When the accused was informed of the same, he did not show any special emotion. The body was kept in the mortuary and PW1 returned along with the accused to his house. While returning, he asked the accused what happened to Sweety. The accused replied that she was unhappy with the accused for meeting the hospital expenses of his mother. At that time, the mother of the accused was undergoing treatment in the Amala Hospital. On returning to the house, some liquid was found in a glass, which appeared to be poison. PW1 informed the police regarding the unnatural death of Sweety and Ext.P1 F.I. Statement was given by him. He has deposed on the details of the room in which Sweety was found lying. He identified M.O. 1 bottom portion of the churidar worn by the deceased and M.O. 2 towel, which was taken by him from the house while Sweety was being taken to the hospital. He was subjected to extensive cross-examination. A suggestion was made that Ext.P 1 was subsequently given and it was predated. He denied that suggestion. He was also questioned as to why all the details spoken to by him in court were not given in Ext.P 1. It was also suggested that Sweety was suffering from mental illness. The same was also denied by the witness. Other suggestions were also made, which may act as apparent reasons for commission of suicide by the deceased. All those suggestions were denied by PW1. In the cross-examination, nothing was brought out to disbelieve the version of PW1.

9. PW2 Sini is the younger sister of the deceased. At the time of the death of Sweety, she was a student of Sacred Heart Convent School, Chalakudy. On the date of death of Sweety, PW2 reached her house from the school by 4.30 p.m. At that time, the elder sister Sweety alone was there. She was told by her elder sister that mother has gone to the market and the accused has gone out. Sweety also told her that for the marriage of Benny (PW10), his bride Seethal was wearing the sari of Sweety. Her husband Babu (accused) and Benny were wearing similar shirts. Sweety appeared to be very happy. After some time, the mother came back and still later, her younger sister Sibi came. Thereafter, Sweety started examining the items received as presents at the time of marriage. One portrait was among them. She took it and kept it in her room, saying that it should be taken while going to the Gulf. The stereo set (kept in the hall) was also taken and placed in the bed room. Normally, it was kept in the hall. Sweety talked to one Sobha (PW3) at 7.15 p.m. She appeared to be very happy during her conversation with Sobha. They talked for about 20-25 minutes. At about 8 p.m., a call was received from the accused. Sweety took the phone.

The mother asked Sweety what was the matter and she replied that she was scolded for not taking bath. Thereafter, Sweety went for taking bath. Another call came from the accused after 10 minutes. This time, it was the mother who took the phone. When she told him that Sweety is taking bath, the accused disconnected the phone. Thereafter, Sweety came after bath. She started reading "Vanitha" and "Nana" magazines, lying in her bed. By about 9'0 clock the accused again telephoned. It was PW2, who took the phone. He wanted to get Sweety. She was asked to call Sweety, who was lying in her bed. Sweety came and took the phone. After the phone call was over, the mother asked her what was the matter. She replied that the accused asked her to take the medicine and sleep and when Babu came back, the mother might be asked to call her. Sweety murmured, why a sleeping person should be roused and again asked to go to sleep. When the accused came, why the mother should call her, when he himself could call her. After telling this, Sweety went to her room. By about 10.30 p.m., the father (PW1) came. After some time, the accused also came and he sat on the settee. The mother was asked to prepare a tea for him. While preparing the tea, she handed over a towel to him to wipe the water on his head, as the accused came wet from outside. After commenting about the cold climate, the accused closed the door and the windows. He also gave sweets to PW2 and her sister Sibi. Asking why Sweety did not get up, the mother knocked at the door of the room, in which, she was sleeping. But, the door was not opened. So, the father and others broke open the glass of a side window. At that time, the accused was standing in the sit-out. When the window-pane was broken, it was found that Sweety was lying on the floor. Though water was poured on her through the window, she did not get up. So, the mother, with a lever, opened the door using force. Though Sweety was shaken to rouse her, she did not wake up. The mother called the accused. He came and tried to lift her. But, she fell down from his hands. Thereupon, the father went out and came with an autorickshaw. PW2 tried to massage the chest of Sweety and tried to give artificial respiration. The accused prevented her from doing that. The mother and the accused took Sweety to the hospital. Later, they came back and told that Sweety was dead. PW2 did not find any signs of sorrow on the face of the accused. She was subjected to extensive cross-examination by the defence. Her statement was recorded by the investigating officer on 20.8.2000. The witness also told that other policemen have questioned her earlier also. A suggestion was put to her to the effect that the said statement was made as directed by the Action Council (which was formed for proper investigation into the death of Sweety). She denied the same. She used to study sitting in the hall where the phone was kept. She did not hear what Sobha told her mother and elder sister. Sweety told about going to the Gulf on the strength of permanent visa. She also talked about taking books while going to the Gulf. She was smiling while talking to Sobha. That was why she said, Sweety was very happy, the accused was to go abroad within six days. She denied the suggestion made to her to the effect that her elder sister was a mental patient.

10. PW3 is Sobha, who was a friend of the deceased. She was also a family friend. She participated in the betrothal as well as the marriage of Sweety. She further deposed that Sweety was very happy with the marriage. On the date of death of Sweety, her mother came to her house with the photo album of the marriage. By 4 O'clock, Sweety telephoned her and asked her mother to come back with the key of the house. Immediately her mother went back. On that day at about 7.15 p.m., Sweety's mother telephoned her and they talked for some time and thereafter the phone was given to Sweety. They talked for some time and Sweety did not express any adverse opinion about her husband. Sweety talked about their trip to Kozhikode. She talked for some time about the album. She asked when the accused would be returning to the Gulf. She was told by Sweety that normally, he had to go abroad on 7.6.2000. But, he was intending to telephone to the employer to get extension up to 15.6.2000. She asked Sweety whether she would cry when her husband went to the Gulf. She replied, why she should cry, as she was also going to the Gulf within three months. She would be going on permanent visa. The books would be taken, so that she could prepare for the examination. The witness invited the couple to her house. But, since the accused had to return the next day, she said, she could not come. The witness further stated that the deceased was talking happily. Thereafter, at about 1.15 a.m. in the night, a telephonic message came from Sweety's house that she was dead. She participated in the funeral. Though she looked for the accused, he was not seen. In the cross-examination, she has stated that she has spoken about the absence of the accused in the funeral only for the first time before the court. About thousand people participated in the funeral. She did not find any person in police uniform attending the funeral. The funeral was on 3.6.2000. She does not know Benny (PW10). Sweety was having good opinion about her husband and his family members. A few contradictions in her statement before the court with reference to her statement u/s 161 of the Cr.P.C. were marked as Ext.D 1 series by the defence.

11. PW4 was the witness who spoke about the efforts made by the accused to procure cyanide poison. His brother-in-law was running a shop in the name "Fashion Gift Centre". He and his brother-in-law were doing business from that shop. They manufactured gold ornaments and supplied the same to jewellers, as per the orders placed by them. He knew the accused. He was introduced to the witness by Mr. Benny (PW10). After the first introduction, PW4 met the accused twice and talked to him. He was seen last by the witness in May 2000. One day at noon, the accused came to his shop and asked whether he could get some cyanide. The witness replied that there was no cyanide with him and enquired what was the purpose of procuring cyanide. The accused replied that the dog in his house was not well and to kill it, cyanide was required. PW4 said that cyanide would be available with those doing the colouring work of gold ornaments. Thereupon, the accused asked the witness to enquire with such persons doing colouring work. He replied that at present there was no one in the shop and when he would go out for lunch, he would enquire about the same.

Thereupon, the accused went away, saying that he would come after some time. After about one hour, the accused came back. Thereupon, PW4 and the accused went in an autorickshaw, to an establishment called Seethal Colouring, near Puthenpally. At that time, Namdev (PW12), the brother of Shivji was there in the shop. PW4 asked him whether he could give some cyanide. He was asked what was the purpose. He told Namdev that it was for a friend of him. Thereupon, P W12 replied that even if it was for him, cyanide would not be given. Thereupon the witness came out from the said shop and told the accused that cyanide could not be procured. When they were returning, they saw one Mr. Davis, who was running an establishment called United Testing. The accused told PW4 that Davis was a friend of him and therefore, he would ask Davis. When the accused was moving towards Davis, PW4 got into an autorickshaw and returned to his shop. He has stated all these facts before the police and later before the Magistrate also. Ext.P2 was the statement given by him before the Magistrate u/s 164 of the Cr.P.C. In the cross-examination, he stated that he gave the statement before the police three weeks after he talked to the accused. He was questioned by the police. He met the accused 5-6 days before the death of Sweety. He has given statement before the Magistrate, upon receiving summons through the police for the same. While giving the statement before the Magistrate, Davis was also present in the court. When he came out from the court after giving the statement, he saw Davis going inside. On that day, PW7 was also present for giving statement. He (PW4) has deposed that he met the accused for the first time in Alukka Tourist Home. Benny (PW10) was a friend of the witness. He used to purchase gold from Benny. The witness has stated that he did not undertake the process of colouring work. Benny also did not have that work. He has not given gold ornaments to any of the branches of Alukkas Jewellery. He gave the statement before the Dy. S.P. for the first time on 25.6.2000. Before that he has not told about the incident to anybody. The witness denied the suggestion that he was giving false evidence against the accused.

12. PW5 Davis stated that he knew the accused for the last 5-8 years as an employee of Alukkas Jewellery. The accused was in Dubai. After he returned from Dubai, the witness has seen him twice. Last time, he saw the witness 5-6 days before the death of Sweety. At that time, the witness saw the accused talking to PW4 in front of Seethal Colourings. When he saw him, by raising his hands the accused asked him to stop. When asked, the accused told him that he came to purchase a thing. He added that he came to purchase cyanide. He also stated that to end the nuisance of dogs and cats in his wife's house, cyanide was required. The witness told him that the cats could be entrusted to the persons who used to eat them and the dogs could be killed by informing the veterinary surgeon, who would inject and kill them. Thereafter, he walked in the direction of Puthenpally. PW4 was also with them. Babu (the accused) asked from where the witness was procuring cyanide. In the meantime, an autorickshaw came, in which PW4 went away. The witness told the accused that he was not (personally) purchasing cyanide. Its purchase was made by his workers. Then the accused

asked whether the witness knew from where they purchased the same. He replied that it was being purchased from somewhere near Anchuvilakku. By that time they reached Puthenpally. The witness boarded an autorickshaw and went away. Babu walked in the direction of Anchuvilakku. The witness admitted that he was questioned by the police and he has given statement before the Magistrate's Court. In the cross-examination, he admitted that he knew about the case from the policeman who came to serve the summons on him, to give evidence before the Magistrate's court. Before he gave statement before the Magistrate's court, there were reports in the newspapers about the death of Sweety. On seeing the reports in the newspapers, he talked to two or three of his friends, regarding the enquiry made by the accused for purchasing cyanide. He was supplying gold ornaments to Alukkas Jewellery before 1993. Up to 1993 he has done works involving the use of cyanide. The witness further deposed that Alukkas Jewellery has got a workshop in Thrissur. In their workshop they are not using cyanide. The Alukkas Jewellery has got a workshop for purification of gold. They have a gold refinery at Kozhikode. The defence put a suggestion that the witness has to discontinue giving gold ornaments to Alukkas Jewellery because of the intervention of the accused. He denied the said suggestion. At present, the witness was doing only gold testing work. He used to purchase cyanide before 1993 only.

13. PW6 was the Judicial First Class Magistrate, Irinjalakkuda, who recorded the statement u/s 164 Cr.P.C., of PW4, PW5 and PW7.

14. PW7 is the witness, who sold one kilogram of cyanide to the accused. He was running an establishment called C.P. Sons Engraving and Electro Plating, which was engaged in electro plating. The licence issued to it from the Municipality was in the name of his father. Since his father was aged, he (PW7) was running it. Apart from electro plating, colouring work of gold ornaments was also undertaken. For the above work, sodium cyanide was required. The accused had come to his shop twice. The witness had no previous acquaintance with him. First time, he came by the end of May, 2000. He came one day in the afternoon. The accused told him that he was working in a Jewellery Shop. Recently, he has started a shop where colouring work of gold ornaments was undertaken. To give yellow colour to the ornaments, he requested to give him cyanide. The witness questioned the accused as to whether he knew how to take colour (to do colouring). The accused replied and explained the process correctly. When he heard about the same, he did not feel any doubt about the accused. The accused wanted one kilogram of cyanide. On the very same day he sold one kilogram of cyanide to him. Thereafter, by the end of June, the accused came along with the police to his shop. The police asked whether he gave cyanide to the accused. He replied in the affirmative. He showed the police the balance cyanide remaining in his shop. The police took a sample from it. A mahazar was prepared, in which he signed. Ext.P5 was that mahazar. The police questioned him. He gave statement before the Magistrate's court, Irinjalakuda. In the cross-examination, the witness admitted that he has no licence to deal in cyanide. He was not

maintaining any accounts for the purchase and sale of cyanide. Cyanide was supplied to his shop by certain persons from Tamil Nadu. He would sell cyanide only to familiar persons, in whom he has confidence. If a stranger came, cyanide would be given, if only he was introduced by somebody. If jewellery owners came, cyanide would be sold to them, if only they showed that they had licence for colouring and cleaning. The witness has stated that he went to the Magistrate's court for giving statement, on receipt of the summons served by the police. The policeman who brought the summons, explained the reason for recording his statement. He denied the defence suggestion that he was giving false evidence against the accused under the threat and coercion of the police.

15. PW8 was the Parish Priest. He was examined to show the demeanour of the accused on the date of death of Sweety and also the explanation given by Babu (accused) for the death of Sweety. The witness deposed that Babu told him that Sweety committed suicide because of his affection to Delia. Delia was a very young girl and the daughter of the elder brother of the accused. According to the witness, there was no reason for Sweety to commit suicide. He has also deposed that he has not seen the accused during the funeral. He (PW8) was associated with the Action Council, which was formed to support the demand for proper investigation into the death of Sweety.

16. PW9 is the mother of the deceased. She also gave evidence on the happenings in the evening of 1.6.2000, corroborating the version given by PW2. According to her, Sweety appeared to be very happy in the evening on the said date. Sweety and her husband came to the house at about 4 p.m. The witness was away in the house of Sobha (PW3). On receiving a call from Sweety, she immediately returned. On her coming, Babu (accused) left for Muringoor, to take his sister living there, to Amala Hospital, where his mother was undergoing treatment. After Babu left the house, she talked to Sweety. Among other things, PW9 asked whether she was taking any precaution against pregnancy. Sweety told her that the accused was giving her a white ayurvedic powder as contraceptive. Thereafter, she went to the market. When she returned from the market, Sweety was found talking to her sister Sini (PW2) happily. They were examining the gift packets received for the marriage. The youngest daughter also joined them. By about 7 - 7.15 p.m., the witness telephoned Sobha. After talking for some time, the phone was handed over to Sweety, who talked about 20-25 minutes. Immediately after Sweety replaced the phone, a call came from the accused. It was the deceased who took the phone. The witness asked her what was the matter. Sweety replied that the accused scolded her for not taking bath. After 10 minutes, again the accused called. The witness took the phone. When he was told that Sweety was taking bath, he immediately disconnected the phone. Thereafter, at about 9 O'clock, again the accused telephoned. This time the phone was taken by PW2. When Babu and PW2 were talking, Sweety came and took the phone. They talked for some time. When PW9 asked why the accused called her, she replied that Babu told her to go to sleep after taking the medicine and when the accused returned the mother might be directed to call

her. She murmured why a sleeping person should be roused and again asked to go to sleep. When the accused came, why he could not call her. Saying this, she went inside the room. Soon thereafter, PW1 telephoned and informed the witness that he would return from work only by 10.30 p.m. Her husband came by 10.30 p.m. Soon thereafter, the accused also returned. He sat on the settee and asked PW9 to prepare a tea for him. She gave him a towel, so that he can wipe the (rain) water on his head. While taking the tea, the accused closed the door and the windows. Later, he took some sweets and gave the same to the younger children. When Sweety did not get up and come, PW9 knocked at the door and called. There was no response. They tried to find out whether any window was remaining open. They were also closed. So, a window-pane was broken. Sweety was found lying on the floor of the room. Using a lever the witness opened the door by force. When she tried to shake Sweety, so that she may wake up, there was no response. Though they attempted to carry her, she fell down. PW1 went out and called an autorickshaw. By that time, PW2 was massaging on the chest of Sweety and was trying to give her artificial respiration. But, the accused prevented her from doing that. Sweety was carried to the autorickshaw and she was taken to the hospital by PW1 along with the accused. After half-an hour, they returned and told that Sweety was dead. There was no change in the expression on the face of the accused. He did not participate in the funeral on 3.6.2000. She identified MO 1 pants (churidar bottom), MO3 sheddy (panties) and MO4 brassier of the deceased. She was also extensively cross-examined by the defence. Her statement as per the records, were recorded on 2.6.2000 and 5.6.2000. In the cross-examination, a question was put to her why in her statement before the police on 2.6.2000 she has not stated anything about the direction of the accused to Sweety to take the medicine and go to sleep. The witness admitted that she did not say about it, as, at that time she never had an inkling that the accused would kill Sweety, using medicine. That was the reason for not disclosing that fact. The witness denied the suggestion of the defence that she has previous acquaintance with Benny. She denied the suggestion that she has falsely stated regarding the ayurvedic contraceptive given by the accused to Sweety, to prevent pregnancy. Ext.D2 series contradictions and Ext. D3 series contradictions were marked through the witness with reference to her CD Statement.

17. PW10 Benny was a friend of the accused. He deposed that the accused came from the Gulf on 4th April 2000. As requested by the accused, the witness went and met him at the Airport. They returned together from the Airport to Thrissur. The accused took a room in Alukkas Tourist Home and stayed there. The witness again went to Thrissur after two days and met the accused in the lodge. At that time, he introduced Jaison (PW4) to the accused. PW10 had participated in the marriage of the accused. Two-three days after their marriage, he went to Sweety's house. There he (PW10) divulged that he was in love with a girl and he was proposing to register their marriage. After taking food, they went to Chalakudy in a scooter. He asked the accused about the first night. Then the accused said that Sweety did not have any interest in sexual intercourse. The

couple came twice to his house at Kozhikode. When they came first, they went to Mahe Church and also to the house of Francis Alukka. Since they did not know the house of the said Francis Alukka, he accompanied them. They came a second time to attend the registration of his marriage. While he was waiting in the Railway Station to receive them, they came by bus. After leaving Sweety in the neighbouring house of PW10, the accused came to the Railway Station to meet the witness. While they were returning from the Railway Station, he asked the accused about their marital relationship. The accused stated that his wife was not permitting him to have sex, as desired by him. Further; she has abused him and the same caused great mental pain to him. After his marriage on 31st, Sweety and the accused came back to his house. They went out, later, saying that they are returning to Thrissur. Thereupon, the witness also went out. After some time, when he returned, he found that Sweety and the accused were sitting in the sit-out of his house. On seeing him, the accused came down. PW10 asked him why they did not go. In reply, the accused stated that Sweety agreed to have sex, if they stayed at Kozhikode. Thereafter, they went out to take food from outside. Before going to bed, he talked to the accused. The accused told him that it was impossible to live with Sweety. Before that Sweety had called to her house from there. Sweety gave PW10 the phone and he talked to the mother of Sweety. After, talking for some time, the mother asked PW 10 to give the phone to Babu. At that time Babu had gone out. Next morning Sweety and the accused went to Thrissur. After reaching Thrissur the accused telephoned him. On that night the mother of Sweety telephoned him and told him that Sweety has been taken to the hospital. On the same night he started for Chalakudy. After reaching Thrissur he telephoned and got information that Sweety was dead. On 31.5.2000 when Babu went out, he and Sweety sat talking. When the accused returned, he stared at PW 10 in a peculiar manner. In the cross-examination the defence suggested that PW10 has previous acquaintance with Sweety and her family and the same was denied by the witness. He has acquaintance with the accused since 1991. They became very close in 1998, after they met during a course in the Bishop's House at Thrissur. The course was part of pre-marital counselling. At that time there was a proposal for the marriage of the witness. He has been questioned by the investigating officer four times. The defence made suggestion in the cross-examination to the effect that he had some illicit affair with Sweety. He denied the same. In the cross-examination, he admitted that he has stated before the police that Babu told him about the disinclination of Sweety to have sex with him, as he desired and that she abused him calling insane, old man etc. The witness denied the suggestion that in his shelf there were chemicals required for colouring gold ornaments. The witness denied the suggestion that he had sexual intercourse with Sweety on the nights of 30th and 31st of May and because of that she committed suicide. The witness also admitted that the accused has filed two cases against him in 2002 for dishonouring of two cheques issued by him.

18. PW11 was the Village Officer, who prepared the site sketch.

19. PW12 was Namdev, who was engaged in the business of colouring gold

ornaments. He stated that sodium cyanide was one of raw materials required for colouring gold ornaments. The police questioned him in connection with the death of Sweety. Jaison (PW4) from Fashion Gift House used to come to him for taking colour (for colouring ornaments). By the end of May, 2000 he asked for a piece of cyanide for his friend. He did not give it. For using cyanide, licence was necessary. He never had licence for using cyanide. He has got only Municipal licence for running the shop. The police questioned him by the end of June, 2000. Jaison came to his shop about one month before he was questioned by the police. He knew Jaison for the last two years. He denied the suggestion that Jaison never came to his shop and asked for cyanide. He also denied the suggestion that he was giving statement, as he was afraid of the police.

20. PW13 was a person, who was engaged in gold wholesale business. He spoke about that Davis (PW5) told him, after the death of Sweety, regarding the efforts made by the accused to get cyanide, a few days before her death.

21. PW14 was the person, who was running a telephone booth, from which the accused made the telephone calls to the house of the deceased on 1.6.2000. He identified the accused standing in the dock and stated that the police brought the said person on 17.6.2000 to his booth. He was examined to corroborate the version of PW2 and PW9 that the accused telephoned to the house of the deceased thrice in the evening of 1.6.2000.

22. PW 15 was the doctor, who was working in the Taluk Hospital, Chalakudy at the relevant time. He deposed that he examined Sweety at 11.10 p.m. on 1.6.2000, when she was brought to the hospital. According to him, she was brought dead. Ext.P7 was the accident-cum-wound certificate issued by him.

23. P W16 was the doctor who conducted the post-mortem examination on the body of the deceased and issued Ext.P8 post-mortem certificate. Ext.P9 was the final opinion given by the said witness regarding the cause of death of Sweety. The final opinion was that the deceased died by hydro cyanic acid poisoning.

24. PW 17 was the Professor of Forensic Medicine in the Medical College, Thrissur on 3.6.2000. He had counter signed Ext.P8 post-mortem certificate and Ext.P9 final opinion. He has deposed that sodium cyanide would react with Hydrochloric Acid in the stomach and hydro cyanic acid would be formed. It is a poisonous material. The absorption of that material would cause death. Death would occur within 10 to 20 minutes on consumption of cyanide. Absorption would be hastened in an empty stomach. From P8, it could be seen that the stomach of the deceased contained very small quantity of food material. The injuries found on the body were simple injuries and they were fresh also. They might have been caused, as the victim fell down after the consumption of cyanide. There was another possibility of epileptic form of convulsions when the poison acted. The same might have caused the injuries. He has also deposed that if cyanide powder was given masked in some other substance, traces of that might be found in the chemical analysis report, if the examiner made specific examination for that. The

witness also added that there was possibility of involuntary discharge of urine and excreta, if the same was available in the site (bladder and rectum). If there was discharge, that would be seen in the dress of the person.

25. PW18 was the Tahsildar, Mukundapuram, who conducted the inquest and prepared Ext.P 10 inquest report. He seized MO1 churidar bottom, MO2 towel, MO3 sheddy, MO4 brassier and MO5 churidar top worn by the deceased. In the cross-examination he stated that the inquest report was entrusted with the police officer on that day itself for giving it before the Sub Divisional Magistrate's Court.

26. PW19 is the witness in Ext.P11 scene mahazar. PW20 was the S.I. of Police, who recorded the F.I. Statement and registered Crime No. 242/2000 of Chalakudy Police Station. Ext.P 1(a) was the F.I.R. He prepared Ext.P 11 scene mahazar on 2.6.2000. A liquid was found in a glass in the wall-shelf of the room where the death took place. Its contents were poured into a plastic bottle and sealed. The remaining liquid in the glass was wiped using a white cloth and the said cloth was enclosed in a polythene cover and sealed. MO6 was the glass taken into custody by him. MO7 was the cloth, using which the remaining liquid from the glass was removed by wiping. Using another cloth a stain found on the floor near the double cot in the room was wiped and taken. It was also sealed in a cover, which was produced as MO8. It was vomitus that was so collected. The material objects taken as per the inquest report were sent to the Sub Divisional Magistrate's Court, by preparing a property list on 2.6.2000. Ext.P 12 was the property list. M.Os. 6 to 8 were sent to the Sub Divisional Magistrate's Court on the very same day. The property list of the same was Ext.P 13. Ext.P 14 was the forwarding note for sending M.Os. 5 to 8 for chemical examination. The plastic bottle preserving the solution was MQ9. MO9 was sent along with M.Os. 6 to 8 to the court. That was also included in Ext.PI4 forwarding note. Ext.P15 was the chemical analysis report. Ext.P 1(a) FIR was sent to the Sub Divisional Magistrate's Court. He questioned some of the witnesses and recorded their statements. The delay in sending certain reports and material objects to the court in time was highlighted by the defence, while cross-examining him. The omissions and contradictions in the statement of the witnesses recorded by him were also proved through the witness by the defence.

27. PW21 was the Deputy Superintendent of Police, who took over the investigation on 5.6.2000. He completed the investigation and laid the charge before the Judicial First Class Magistrate's Court, Chalakudy. It was he who arrested the accused on 26.6.2000. The mahazar seizing Malayala Manorama paper ExtP 16 was marked through him. MO. 10 Malayala Manorama paper was also identified by him. Ext.P 17 was the mahazar prepared by him for seizing MO. 11 steel spoon. Ext.P 18 statement, which led to the discovery of C.P. Sons Engraving and Electro Plating shop and its owner PW7, was marked through him. The mahazar under which sodium cyanide was recovered from the said shop of PW7 was Ext.P5. Ext.P 19 was the report naming the accused and also including

Section 302 I.P.C., as the offence committed in the crime already registered. Ext.P20 was the remand report filed while producing the accused before the court. The cyanide collected was produced before the court for sending it for chemical examination. Ext.P21 was the property list and Ext.P22 was the copy of the forwarding note for the cyanide. Ext.P23 was the chemical analysis report received. Ext.P24 was the property list for the production of M.Os. 10 and 11. Ext.P25 was the forwarding note for sending them for chemical examination. Ext.P26 was the chemical analysis report received. Ext.P27 was the mahazar seizing the passport of the accused and Ext.P28 was the passport. Ext.P29 was the original of final opinion regarding the cause of death. Ext.P30 was the analysis report of viscera and blood preservative. The witness questioned the Psychiatrist called Gheevarghese and recorded his statement. The Psychiatrist has stated that the accused was undergoing treatment under the said doctor. He was treated by the said doctor between February, 1988 and May, 1988. The omissions and contradictions in the statements of the witnesses were proved through PW21. The non-forwarding of the original of Ext.P22 and the delay in forwarding various documents to the court were also put to the witness by the defence and he gave his explanation.

28. The accused was questioned u/s 313 of the Cr.P.C. After answering the questions, he further stated that he was treated for mental illness by Dr. Gheevarghese, while he was studying for B.Com. He was taking medicine even at the time of trial of the case. Benny was a friend of him. The marriage was solemnized through a broker sent by Benny (PW10). He (the accused) liked Sweety. His mother was admitted in Amala Cancer Hospital for treatment. He told Benny that he went to see Sweety and he liked her. Then Benny told him that he has friends there near the house of Sweety and he will ask them about her. Benny also told him that he has obtained very good opinion about her from them. Benny was in the forefront for inviting people for the marriage. He trusted Benny very much. Benny asked him and Sweety to come for the registration of his marriage on 31st. The accused told him at first at first that he was not coming. He stated so, because of the operation of his mother on 31 st. He went for the marriage as insisted by Sweety and her mother. They went on 30th May. After the registration of the marriage," the bride was proposed to be sent to her house. Therefore, he was not interested in going for the marriage. When he told about this to Sweety and her mother, he was asked why he should bother as to whether they were staying together or not after the marriage. Only because of their insistence, he went for the registration of the marriage. The marriage was conducted at 11 a.m. on 31st before a Notary and not before the Sub Registrar's office. On 31st evening he went out to telephone to the owner of his shop at Dubai. When he came back, he saw Sweety and Benny engaged in sexual intercourse. When asked, she told that Benny did it by force. He had given plenty of ornaments to Sweety. Sweety kept them in the almirah in Benny's house. He thought, she took some poison from that shelf and consumed it. He was innocent in this case. Benny was cheating him, he stated.

29. The learned Sessions Judge formulated the following questions for decision: (1) Did Sweety died on account of cyanide poison? (2) Did the accused give poison, intending to cause her death? (3) What is the offence, if any, committed by the accused? (4) If the accused is guilty, what should be the sentence?

30. Considering point No. 1, the Sessions Court correctly found that Sweety died on account of hydro cyanic acid. The said finding was rendered, based on the evidence of PW16 Dr. S. Remadevi and PW17 Dr. V.K. Ramankutty. Ext.P30 chemical analysis report would show that the viscera contained hydro cyanic acid. PW17 has deposed that if cyanide reaches the stomach, it will react with hydrochloric acid and hydro cyanic acid will be formed. If the same is absorbed in the blood, it will result in death. So, the finding of the court below that the death of Sweety was caused due to hydro cyanic acid poisoning, is upheld.

31. But, while considering the second point, the learned Sessions Judge entered a finding that there was no evidence to show that Sweety died on account of sodium cyanide poisoning. The lengthy discussion by the learned Sessions Judge on this point covers paragraphs 14 to 31 of the impugned judgment. The learned Sessions Judge has opined that what was found in the viscera was hydro cyanic acid, which can be produced by the reaction of hydrochloric acid with sodium cyanide or potassium cyanide. So, it cannot be concluded that the deceased died of sodium cyanide poisoning. When the body was taken to the hospital, a towel was also carried along with that from the house of the deceased. There was no cyanide poison found in that towel. The said towel was seized and produced as MO2. The same was not sent for chemical examination, apparently for the reason that it was a fresh towel brought from the house of the deceased by her father, while carrying the deceased to the hospital. But, the non-sending of the same was described as suppression of material evidence by the learned Sessions Judge. Further, the learned Sessions Judge noticed the opinion of PW17 that in case of death on account of cyanide poisoning, there will be involuntary discharge of urine and excreta, if the same is available in the site (bladder and rectum). PW 17 also stated that in the rectum there will always be some residue of excreta. But, PW18 did not find any excreta in the sheddy. So, it casts some doubt on the prosecution case, says the learned Sessions Judge. We think, the above view expressed by the learned Sessions Judge is plainly perverse. The above observations of the learned Sessions Judge are contained in para 23, which is quoted below:

The inquest was conducted on 2.6.2000 in between 12 noon and 2.45 p.m. It was conducted by PW18, the Taluk Tahsildar. At the time of inquest he preserved the clothes on the corpus viz., the bathing towel (M.O. 2), churidar top (M.O. 5), churidar bottom (M.O. 1), sheddy (M.O. 3) and brassier (M.O. 4). It is curious to note that PW17 has state that in case of death of cyanide poisoning, there will be involuntary discharge of urine and excreta, if available. Then a question was put that in the rectum there would always be some residue of excreta. He answered in the affirmative. But, PW 18 did not find any excreta in the sheddy. If casts

some doubt. PW1 has stated that at the time of inquest itself M.Os. 1 to 5 were entrusted with the police. PW20 has stated that those were produced before the Sub Divisional Magistrate along with Ext.P 12 property list. But out of them, M.O.5 alone was forwarded for chemical examination. It is curious to note that a towel was brought. It was not sent for chemical examination. It is relevant to note that a towel would be used to wipe off the body fluid. That would certainly contain the vomitus. As it was found as a case of unnatural death, the hospital authorities would not have washed it. P.Ws.1 and 18 have admitted that M.O.2 towel was seized from the body, but that towel which would certainly have contained the remnants of the vomitus, if any, has not been forwarded for chemical examination. It looks to be a suppression of material evidence which will only invite adverse inference. Ext.P 15 is the chemical examination report. M.O.5 is item No. 1 in Ext.P 15. In it a yellowish water soluble material (stain) was found. But no cyanide was found in it on chemical examination. PW17 has stated that sodium cyanide is water soluble. Since water soluble was found in the churidar top and if it contained sodium cyanide, on chemical examination it would have been detected.

(Emphasis supplied)

32. The learned Sessions Judge was viewing everything done by the prosecution with a suspicious eye. From the scene of occurrence MO6 glass was seized. The liquid found in the glass was poured into a plastic bottle and the same was seized as MO9. Using a clean cloth the glass was completely wiped and the said cloth was enclosed in a sealed packet and covered by a polythene paper. It was seized as MO7. A stain found at the scene of occurrence was wiped using a piece of cloth. It was taken in a sealed packet and seized as MO8. At the initial stage of investigation, it was taken as a case of unnatural death and the documents and the material objects were being sent to the Sub Divisional Magistrate. Since the deceased was found in an unconscious stage in a room bolted from inside, homicide was not initially suspected. Everyone proceeded on the footing that it was a case of suicide. The accused was suspected of, at the worst, having committed the offence u/s 304B or Section 498A of the I.P.C. So, the formalities regarding seizure of the material objects were not properly completed and there was delay of a few days in producing them before the Sub Divisional Magistrate. There was no seizure mahazar for seizing M.Os. 7 to 9. The scene mahazar Ext. P11 did not mention about the seizure of those material objects. But, they were covered by Exts.P 12 and P13 properly lists dated 2.6.2000, which were received in the court Sub Divisional Magistrate on 8.6.2000. So, the learned Sessions Judge suspected manipulation in the seizure of M.Os. 7 to 9. Going by normal human conduct, it can be safely presumed that there was no reason for the police to procure sodium cyanide and create false evidence, to show that Sweety died of sodium cyanide poisoning. The chemical analysis report, Ext.P30, confirming the presence of hydro cyanic acid in the viscera of the deceased was prepared only on 10.7.2000. The said report was forwarded to the Sub Divisional Magistrate along with a covering letter dated 12.7.2000. To get corroboration for

a chemical analysis report, which came into existence on 10.7.2000, it is not probable that the police will create false evidence between 2.6.2000 and 8.6.2000, by procuring sodium cyanide from the market. The delay or defect in seizing or forwarding, the material objects need not be fatal to the prosecution in all cases. If the same is accepted as an invariable rule, many an accused will extricate themselves from fault, if they can influence the investigating officer and manipulate these matters. But, in this case, even if we do not rely on Ext.P 15 chemical analysis report, for the reason that M.Os. 7 to 9, which, on chemical analysis, were found to contain sodium cyanide as per that report, were not seized under a mahazar, the same will not affect the prosecution case. We may not be understood as approving the seizure of M.Os. 7 to 9 without a mahazar, made by the sub Inspector of Police. We are also not disapproving the refusal of the learned Sessions Judge to rely on Ext.P 15, for the reason of the irregularity in the seizure of the said material objects. But, on the facts of this case, it was unnecessary for the prosecution to prove further that the deceased died of sodium cyanide poisoning. The learned Sessions Judge misread the decision of the Apex Court in AIR 1994 945 (SC) and held that even if the deceased was found to have died of cyanide poisoning, it should be further proved that the poison used was sodium cyanide. In the case decided by the Apex Court, the chemical examination report only showed that the wife of the appellant died of cyanide poisoning. The appellant was found to have procured potassium cyanide. The courts below proceeded on the footing that the chemical examiner's report showed that the deceased died of potassium cyanide poisoning. The Apex Court observed that the use of costly potassium cyanide was being phased out and the cheaper variety of sodium cyanide was being used in the chemical processes. The Apex Court also observed that the courts below did not clearly find that the death was not due to suicide. Further, in the house where the deceased met with her death, the appellant's mother was also present. Coupled with the above circumstances, the absence of proof of death by potassium cyanide was taken as a circumstance in favour of the accused. This will be evident from a close reading of para 6 of the above said judgment. But, in this, case, we are of the view that there need not be further proof to show that the hydro cyanic acid found in the viscera of the deceased was produced by sodium cyanide only. In this case, we are of the definite view that the death of Sweety was not due to suicide. The reasons for the said view we have given in detail in the later part of this judgment. The reasons given by us there, about the inability of the deceased to procure sodium cyanide, will apply with more vigour to the procurement of potassium cyanide. So, we find that it was unnecessary for the prosecution to prove that Sweety died of sodium cyanide poisoning.

33. The learned Sessions Judge has, in this case, disbelieved the versions of P.Ws.4, 5, 7 and 12. The learned Sessions Judge also without any valid reason delved into the unnecessary part of the deposition of PW10, which has no relevance in this case.

34. There is no direct evidence in this case, regarding administration of cyanide

by the accused to the deceased. The case against the respondent/accused is sought to be proved by the prosecution, based on circumstantial evidence. The Panchaseel concerning circumstantial evidence formulated by the Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra* 1984 SCC 487 are the following:

- (1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established,
- (2) the facts so established should be consistent only with the hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) 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.

35. In this case, we are of the view that the following facts/circumstances have been proved:

- (i) The deceased died of cyanide poisoning: The evidence on record would show that the deceased went inside a room in the house at about 9 p.m. and locked the room from inside. At about 11 p.m., when the door was opened by force, it was found that she was lying almost dead. Within a few minutes she was declared dead by the doctor who examined her. The medical evidence conclusively proved that she died of cyanide poisoning.
- (ii) The deceased did not commit suicide: The death of Sweety gives rise to two possibilities. One of suicide and the other that she was persuaded to take poison under the guise that it was a medicine, as stated by the prosecution. We are of the view that the deceased taking cyanide poison and committing suicide is inherently improbable. She is a newly married house wife. She was always in the company of her husband or her in-laws or her family members on all the days after her marriage on 15.5.2000. It has come out in evidence the difficulties faced by a person, who was trying to procure cyanide. It can be safely concluded that it is quite impossible for a girl like her to find out a source for cyanide and procure it within a few days after her marriage. The accused in his Section 313 statement has stated that the deceased has taken the poison from the almirah of PW10 Benny and consumed it. Cyanide is not a material kept in a pet jar in the shelf like keeping "laddu" with a label on it as "cyanide", so that Sweety can find it and take it. Further, if she had taken the cyanide on the night of 31.5.2000, she would have died within a few minutes. So, the story put forward by the accused that she committed suicide using cyanide, is inherently improbable. The

motive for committing suicide by the deceased put forward by the accused is that he found Sweety and Benny having sexual intercourse. Because of the feeling of guilt, she committed suicide, it was stated. But, the said story is also inherently improbable. If they were found in sexual union by the accused, he would not have stayed with his wife in Benny's house any more. Immediately he would have left that house. It has also come out in evidence that the couple stayed in the house of Benny on 31.5.2000 and on the next day on reaching Thrissur, the accused telephoned to Benny. The said statement of Benny is also not challenged in the cross-examination. So, the explanation put forward by the accused is plainly untenable. Therefore, the possibility of Sweety committing suicide has to be ruled out. This conclusion is further corroborated by the conduct of the deceased in the evening of 1.6.2000. She was beaming with happiness. She was planning about her-future journey to Dubai. She was talking pleasantly to PW3, PW9 and PW2. There was nothing to suspect about some hidden gloom in her heart. So, the possibility of suicide can be safely ruled out.

(iii) The accused procured sodium cyanide from PW7: We notice that the accused tried and succeeded in procuring sodium cyanide, which is proved by the evidence of P.Ws.4, 5, 7 and 12. PW4 says that the accused wanted some cyanide to kill a dog in his house. As requested by the accused, he asked PW12 to supply cyanide. PW12 flatly rejected his request. While so, PW5 Davis came and he was also not able to help the accused, as he was not sure where cyanide was available for purchase. Then he went to PW7. PW7 has deposed that he will not give cyanide to strangers. But, when talking to the accused, he felt confidence in him, as he described the process of taking colour correctly. Further, he was purchasing a large quantity of one kilogram. We find that PW7's explanation is quite satisfactory and convincing. We also find no reason to disbelieve the statements of P.Ws.4, 5 and 12. It is beyond one's comprehension why all these witnesses should join together and conspire to trap an innocent person. We find nothing unusual in their statements, which should create any doubt in the mind of the court. Now, we will come to the question how the learned Sessions Judge dealt with the evidence of those witnesses. The learned Sessions Judge has noticed that in the deposition of PW7, he has stated that he will sell cyanide only to persons familiar to him. He does not keep any accounts regarding the purchase and sale of the same. He does not keep the details of the persons purchasing the same. He admitted, he was dealing in Cyanide unauthorisedly without any licence. In view of the above facts, the learned Sessions Judge formed the opinion that his version cannot be believed. But, we feel that the said view is unjustified. The fact that PW7 is dealing in cyanide, is supported by PW12 also. PW12 had deposed that he is purchasing cyanide from the shop of PW7. The said statement of PW12, who is an independent witness, remained unscathed in his cross-examination. In view of the statement of PW12, we have no doubt in our mind that the version given by PW7 is correct and his statement that he gave sodium cyanide to the accused, can be believed. The view taken by the learned Sessions Judge is plainly wrong and perverse. The

same is the case with the evidence of P.Ws.4, 5 and 12 also. PW5 has stated that he was doing colouring work of gold ornaments up to 1993 and at that time his employees were purchasing cyanide and therefore, he was not aware of the shop from where cyanide was purchased. The learned Sessions Judge has stated that his evidence looks artificial. We find it difficult to subscribe to the same view. Going by his evidence, it is clear that he is a truthful witness and the view taken to the contrary by the learned Sessions Judge is perverse. Similarly, without any valid reason or ground, the learned Sessions Judge disbelieved PW4. There is nothing unnatural in the accused asking PW4 where cyanide will be available, so that he can get some, to kill his ailing dog. PW4 has stated that he was introduced to the accused by PW10 and based on that acquaintance, the accused asked whether he could get some cyanide. Without any valid grounds, the learned Sessions Judge has chosen to hold that his evidence is artificial. Going by his deposition, we find nothing unusual or artificial about his evidence. His evidence is corroborated by PW5 also. So, the finding of the learned Sessions Judge on the trustworthiness of PW4 is perverse. The finding of the learned Sessions Judge that Alukkas Jewellery has got gold refinery, wherein cyanide may be used and therefore, the accused could have procured the same from there, is also not tenable. Normally, no one will collect poison, even if the same is available from his employer, for poisoning his wife. The learned Sessions Judge has held that normally, people will collect poison secretly. The said statement will rule out the possibility of the accused collecting poison from his employer's workshop. The learned Sessions Judge has not given any ground for disbelieving the version of PW12. The learned Sessions Judge also found fault with the disclosure statement Ext.P18, based on which PW7 and his shop was found out. A translation of Ext.P 18 reads as follows:

I will show the shop from which I purchased the cyanide and the person who gave me the cyanide.

Based on the above statement, the accused took the police party to PW7. While criticising the above statement in para 44 of the judgment, the learned Sessions Judge has stated that it was not stated in the disclosure statement that the accused has told PW21 that he has purchased the cyanide from C.P. Sons Engraving and Electro Plating. We find that the said criticism is unjustified. The further criticism of the learned Sessions Judge that the statement does not contain the identity of the shop or of the accused (sic witness), is also made without any justification. The learned Sessions Judge has pointed out another circumstance to disbelieve the disclosure statement. PW14, the telephone booth operator has stated that the police reached the telephone booth on 17.6.2000 along with the accused. But, the Dy. S.P. (PW21) has stated that the accused was arrested only on 26.6.2000. We find that there is nothing unusual about the aforementioned statement of PW14. The accused is the husband of the deceased. Initially, the investigation was concerning the unnatural death of Sweety. At first, everyone proceeded on the footing that Sweety committed suicide. In such circumstances, the police are likely to question the father, the

mother, the sisters and the husband of the deceased. Since the mother and the sister have deposed that on the evening of 1.6.2000 the accused telephoned thrice, he must have been questioned on that and he would have disclosed from where he telephoned. For cross verification of his statement, the police officers might have gone to the booth along with the accused. He has to be taken to find out the booth and also to verify whether the person in the booth identified him. The police can arrest the accused only after getting sufficient materials to implicate him. So, at the investigation stage, the accused accompanied the police to the booth only as a witness and not as an accused. So, according to us, the suspicion maintained by the learned Sessions Judge about the disclosure statement, based on the above circumstances, is plainly untenable. Therefore, the finding that the prosecution did not prove that the accused was in possession of cyanide poison is untenable. A reading of the evidence of PWs.4, 5, 7 and 12 read with the disclosure statement will conclusively prove that the accused purchased cyanide from PW7. There is no reason to view everything and anything connected with the prosecution with doubtful eyes. With great respect, we would say, it is a perverse approach.

(iv) The accused asked the deceased through phone to consume the ayurvedic contraceptive powder on the night of 1.6.2000: PW9, the mother asked Sweety on the evening of 1.6.2000 whether they are taking any precaution against early pregnancy. She said that her husband is giving her an ayurvedic contraceptive powder. The learned Sessions Judge has found that there was no evidence to show that the couple had agreed to delay pregnancy. It is elementary that in these matters there cannot be any direct evidence. It is something planned secretly by the newly married couple. The demand for direct evidence for the same, made by the learned Sessions Judge, discloses a perverse approach in the appreciation of evidence. The prosecution can prove only what it can prove. Further, the finding that the statement of PW9 that she enquired with Sweety whether they were taking any precaution to avoid pregnancy, is improbable and invented to suit the prosecution case, is also an unreasonable approach to the evidence. We find nothing unusual or artificial about the mother asking about such things, especially when Sweety was aged only nineteen. Through the evidence of PWs.2, 9 and 14, it is sought to be proved by the prosecution that the accused had telephoned thrice to Sweety, after he left the house at 4 p.m. After attending the last call, Sweety spoke of his instruction to take the medicine and sleep. PWs.2 and 9 have spoken to about this. We find no reason to disbelieve the versions of the above witnesses on that point. The evidence of PW14 may not be reliable. It is impossible for him to remember the faces of all the persons coming to the booth, to make telephone calls. But, the statement that he was seen the accused on 17th cannot be disbelieved, for the reasons we have already stated. At that time Babu was not an accused, but only a witness. For cross verification of his statement, if he is taken to the booth run by PW14 on 17.6.2000, there is nothing unusual about it. But, even if we disbelieve the version of PW 14 that the accused came to his booth on 1.6.2000 to make

telephone call, there is no reason to disbelieve the version of PW9, which is, in all material particulars, corroborated by PW2, on the above aspect. So, it is proved through reliable evidence that the accused asked the deceased to take the contraceptive powder at about 9 p.m. Thereafter, she was found dead on opening of the door by about 11 O'clock in the night.

36. So, from the above facts proved, we can make certain inferences: The accused has procured cyanide poison. His wife died on account of cyanide poisoning. He was giving ayurvedic contraceptive powder to her. On 1.6.2000 at about 9 p.m., the deceased was asked by the accused to take the medicine and go to sleep and soon thereafter, she was found dead. So, the only irresistible inference that could be drawn is that the medicine taken by the deceased contained cyanide poison. Going by the facts of the case, the only inference that could be drawn is that the poison was mixed with the medicine only by the accused. The hands of other persons in the house, in the administration of poison to the deceased, can be safely ruled out. Her mother or sisters will never do that. Since we have already found that procuring poison by Sweetie being impossible, it can be safely concluded that she was made to take it under the guise of medicine. The only inference that can be drawn is that only the hands of the accused were behind it. If she had committed suicide, she would have employed the familiar methods like hanging or consumption of pesticide available in the local market etc. She would have never gone for cyanide.

37. Application of evidence in criminal cases should be rational and not unrealistic. In this context, it is apposite to refer to the judgment of V.R. Krishna Iyer, J., in *Inder Singh v. State (Delhi Administration)* 1978 SCC 564, the relevant portion of which reads as follows:

2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot bet away with it because truth suffers some infirmity when projected through human process. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.

(Emphasis supplied)

In this context, we also refer to the decision of the Apex Court in *Trimukh Maroti Kirkan v. State of Maharashtra* 2006 (4) KLT 638 (SC). The relevant portion of the said decision reads as follows:

12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal-trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab Vs. Karnail Singh*, . The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case....

(Emphasis supplied)

38. The question regarding the extent of burden of proof in criminal trial was examined by the Apex Court in connection with the interpretation of Section 167 and 178-A of the Sea Customs Act in *Collector of Customs, Madras and Others Vs. D. Bhoormall*, and it will be apt to reproduce paras 30 and 31 of the reports which are as under:

30. It cannot be disputed that in proceedings for imposing penalties under Clause (8) of Section 167 to which Section 178-A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But, in appreciating its scope and the nature of the onus case by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it - "all exactness is a fake". El Dorado of absolute proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessary perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered - to use the words of Lord Mansfield in *Blatch v. Archer* (1774) 1 Cowp. 63 at p.65 "according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially

within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

(Emphasis supplied)

39. The Apex Court in *State of West Bengal Vs. Mir Mohammad Omar and Others* etc., took note of the provisions of Section 106 of the Evidence Act and laid down the following principles in paras 31 to 33 of the reports:

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

(Emphasis supplied)

40. In a case based on circumstantial evidence where no eyewitness account is available, there is yet another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be false, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been expressed in a catena of decisions of the Apex Court. See *State of Tamil Nadu Vs. Rajendran*, ; *State U.P. Vs. Dr. Ravindra Prakash Mittal*, ; *State of Maharashtra Vs. Suresh*, ; *Ganesh Lal Vs. State of Rajasthan*, and *Gulab Chand Vs. State of Madhya Pradesh*, .

41. Now, the next point to be considered is, what is the motive of the accused to poison his own wife. There was dissatisfaction for the accused in the sexual relationship between him and the deceased. It is sought to be proved by the

prosecution, relying on the deposition of PW10. PW10 and the accused were bosom friends. When the accused landed at the Airport, PW10 was present to receive him, as requested by him over telephone. They came together to Thrissur, where the accused took a room and stayed. PW10 stated that he has acquaintance with the accused since 1991. But, they become thick friends from 1998, when they together attended a course in the Bishop's House at Thrissur. He attended the marriage of the accused with the deceased. Later, when they went to Kozhikode on a honeymoon trip, they stayed in his house between 19.5.2000 and 21.5.2000. Again, they went to Kozhikode on 30.5.2000, to attend Benny's (PW10) marriage and then also they stayed in his house. They returned only on 1.06.2000. Apparently, they were the only invitees to the marriage. Those circumstances would show that they were thick friends. The accused also admitted his thick friendship with PW10 in his statement made u/s 313 Cr.P.C. PW10 has deposed that he along with the couple went to Iritty. While travelling in a Maruthi car, after some time, all the three sat in the back seat. The accused was seated in the middle of the back seat. Some beef fry bought from a shop was fed to the mouth of the deceased by PW10. He explains, the deceased did not want to touch the beef and therefore, as requested by her, in the presence of her husband, he put one piece of beef to her mouth. Based on the above incident, the accused suggested that on 30th and 31st May, PW 10 had sexual intercourse with deceased Sweety and out of the guilty mind she committed suicide. It is really strange that the learned Sessions Judge swallowed the above cock and bull story. In a small car, in which the driver was also present, nothing can happen between Sweety and PW10. We are constrained to say that without any justifiable reason the learned Sessions Judge has described PW10 as a villain and an arch womanizer. In that process, the honour of the deceased lady was also tarnished. The imagination of the learned Sessions Judge, if we may say so, ran wild, while dealing with the suggestion of the accused that PW10 may be responsible for the death of the deceased. We have already noticed, no such incident as alleged by the defence can happen, involving the deceased and PW 10. Such a possibility-was inherently improbable, going by the facts proved in this case. P W10 and the accused being bosom friends and both being young, it was certainly possible that they may discuss personal things, including the experience in the first night. The sexual dissatisfaction of the accused disclosed through P W10 may not be a valid ground for an ordinary man to kill his newly married wife. But, the accused was a person admittedly suffering from mental illness and continuing on the drugs for the same. We cannot fathom the feelings in all human minds using the same scale. Some persons may react strangely to simple situations. But, whether that is sufficient or not for ordinary mortals, is not relevant. But, we have no doubt in our mind that the version of PW10 given in this regard, appears to be truthful and can be relied. The allegations made by the accused against him can only be taken as a false story. It should not have been accepted by the learned Sessions Judge and discarded his evidence.

42. Motive is something buried deep in the mind of the perpetrator of the crime. If a sex hungry person is denied sex by his wife, the possibility of his becoming frustrated and desperate cannot be ruled out. When there are other materials on record, which unerringly point to the guilt of the accused, the absence of proper proof of motive will not be fatal to the prosecution. The Apex Court in *State of Karnataka v. M.N. Ramdas* 2003 S.C.C. 134 held as follows:

17. As regards the motive, it is true, as vehemently contended by the learned amicus curiae that the accused evidence is not quite satisfactory. A bald statement that there was a land dispute between the deceased and the accused was made by PW 1, the wife of the deceased. She gave a somewhat detailed version insofar as the enmity between Ranga Raju who is a relation of the accused and the deceased, but that is really not material. The fact that the prosecution did not adduce satisfactory evidence on the motive aspect, in our view, is not sufficient to throw out the prosecution case as unreliable. When there is abundant evidence to show that the accused and the accused alone would have committed the murder, the absence of proof of motive does not vitiate the prosecution case.

In *State of Himachal Pradesh Vs. Jeet Singh*, the Apex Court has held as follows:

33. No doubt it is a sound principle to remember that every act was done with a motive, but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In this context, we may extract the observations made by a two-Judge Bench of this Court (Dr. A.S. Anand, J. - as the learned Chief Justice then was and Thomas, J.) in *Nathuni Yadav v. State of Bihar* (1988) 9 SCC 238 : AIR (1977) SCW 1158:

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champell struck a note of caution in *R. v. Palmer* (Shorthand report at p.308 CCC May 1856) thus:

But if there are any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal Courts that atrocious crimes of this sort have been committed from very

slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant (para 17 of SCC : para 16 of AIR).

In view of the above authoritative pronouncements, the motive proved in this case is sufficient to sustain the case of the prosecution. The finding of the court below that the motive alleged by the prosecution is flimsy, has, therefore, to be rejected.

43. We have already mentioned about the illegal approach made by the court below in appreciating the evidence on many points. For completeness, we mention some more points, where the court below committed manifest illegality in appreciating the evidence. When once hydro cyanic acid is detected in the viscera, the criticism on recovery of various material objects from the scene of occurrence and the non-detection of cyanide poison in them, is plainly untenable and unwarranted. The alleged irregularities, if any, in preserving the scene of occurrence as inaccessible to others and seizing the material objects promptly etc., need not necessarily be fatal to the prosecution. Now, it is well-settled that recovery u/s 27 of the Evidence Act can be of a mental fact also. So, based on the information given by the accused, if PW7 and his shop were discovered by the police, the same is admissible in evidence, in view of the decision of the Apex Court in *Amitsingh Bhikamsing Thakur Vs. State of Maharashtra*, . The original of Ext.P 18, the relevant portion of the confession statement, was missing. So, a copy of it was produced subsequently. But, Ext.P 18 was fully extracted in Ext.P20 remand report, which was received in the court on 27.6.2000 itself. Therefore, there was no reason for discarding Ext.P 18.

44. One of the reasons given by the court below for not believing the case of the prosecution about the three phone calls made by the accused to the deceased, is its non-mentioning in the F.I. Statement. The F.I. Statement was given in the early morning by PW1, the father of the deceased. Even if somebody told him about the phone calls, he was not aware of its relevance. Further, when the phone calls came; he was not there. It is well-settled position in law that the informant need not state everything within his knowledge, while lodging the F.I. Statement. The court below was chosen to disbelieve the version of PW2 concerning the phone calls, for the reason of delay in questioning her. But, PW9 was questioned on 2.6.2000 and 5.6.2000 and she had spoken about the three phone calls made by the accused. So, there was no reason to doubt the statement of PW2, though recorded subsequently. The defects in the investigation, as stated by us earlier, need not, in all cases, be fatal to the prosecution. The court below has raised some doubts regarding the case of the

prosecution, based on the presence of the accused in the police station at 9 a.m. on 3.6.2000. When his wife died an unnatural death, it is quite natural that the police called him to the police station on 3.6.2000. In this case, the postmortem was conducted between 10 a.m. and 11.10 a.m. on 3.6.2000. Thereafter, the body was brought to the house, where there were prayers and later, it was buried in the Church in the afternoon only. So, the brother of the accused calling PW10 to the police station in the morning, the participation of PW10 in the prayer service in the house of the deceased and thereafter his departure to his native place etc., are quite normal conduct from the part of the PW10. The trial court, hit by doubting syndrome, has raised a doubt, stating that the accused might have been arrested on 3.6.2000 and he was in custody thereafter.

45. The view expressed by the court below that the deceased might have committed suicide, is plainly untenable. The circumstances disclosed through the deposition of witnesses would show that there was no reason or occasion for the deceased to commit suicide. The grounds suggested by the defence are flimsy. The fact that the accused did not own any house or the deceased failed in the examination or she had sexual union with Benny etc., are frivolous and false. Yet another ground taken to suggest suicide is the absence of ornaments on the body of the deceased. When PW 1 was recalled and examined, he has stated that those ornaments were removed by the Nurse concerned and handed over to him before the body was removed to the mortuary. It is common knowledge that in the mortuary of a local hospital, a body with gold ornaments cannot be kept, as the ornaments are sure to be lost. We find nothing unusual in the said explanation given by PW1 regarding the absence of ornaments on the body of the deceased. The impossibility of the deceased procuring cyanide stared at the face of the trial court and the trial court noted "Of course, from where she got cyanide still remains unexplained". If the learned Sessions Judge had applied his mind to the facts of the case, he would have arrived at the conclusion that she could have got it only from the accused, as he was the only person in possession of cyanide, among those around her.

46. Having regard to the principles laid down by the Apex Court concerning appreciation of evidence in cases of acquittal, we feel that we are fully justified in reversing the findings of the trial court. The contentions raised by the learned Counsel for the appellant against following such a course are plainly untenable. We meet the contention of the respondent regarding certain minor lacunae in the prosecution case, like non-recovery of balance cyanide etc., by quoting the following words of Krishna Iyer, J. "...truth suffers some infirmity when projected through human process." *Inder Singh v. State* (supra). The court below has committed manifest illegality in the appreciation of evidence and entered wrong findings and conclusions. We hold that the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt. The deceased died of cyanide poison. She was persuaded to take it disguised as a medicine. This was done by the accused, who procured the poison from PW7. The prosecution has proved all the links to bring home the guilt of the accused. By giving a patently false

explanation u/s 313 of the Cr.P.C., the accused has further strengthened the prosecution case.

47. For the sake of argument, let us assume that the evidence regarding consumption of ayurvedic contraceptive and the direction of the accused to the deceased to take it, through phone etc., are embellishment from the part of PW9, who was morally convinced about the role of the accused in the death of her daughter, still, we feel that even if that evidence is discarded, the remaining circumstances unerringly point to the guilt of the accused. The possibility of suicide is rule doubt, not based on the demeanour of the on the evening of 1.6.2000 or the energetic and exuberant disposition exhibited by her, but on the impossibility of her procuring cyanide by herself, If she had any plans to commit suicide, she would have attempted one of the run-of-the-mill methods available to a girl in the village like hanging or consumption of pesticide etc., as stated by us earlier. In this case, somebody caused the deceased to take the poison and she took it unwittingly. The possibility of her father or mother or sisters causing her to take the poison has to be ruled out. The possibility of PW10 handing over a parcel of poison to the deceased at Kozhikode and her carrying it to her house and consuming it, is also inherently improbable. So, the accused, who was found to have procured poison, alone has caused the deceased to take it under deception. Whether the deceased was persuaded to take it as a contraceptive or as a something else, is a matter, which the deceased and the accused alone knew. It is impossible for the prosecution to lead evidence on that aspect. The prosecution has led evidence to the extent possible. So, from the facts proved, this Court can definitely draw the inference, in the light of the principles laid down by the Apex Court in *State of West Bengal v. Mir Mohammad Omar* (supra) that the accused caused the deceased to take the poison. Therefore, we hold that it was the accused and the accused only, who could have caused her to take the poison. The above circumstances clear point only to the guilt of the accused and no circumstance has been brought to our notice, which is inconsistent with his guilt.

48. In the result, the judgment of the learned Sessions Judge, Thrissur in S.C. No. 242/2001 is reversed and we find the accused/respondent guilty and convict him for the offence u/s 302 of the I.P.C. He is sentenced to undergo rigorous imprisonment for life. He is also sentenced to pay a fine of Rs. One lakh. If it is paid or recovered from the assets of the accused/respondent, it shall be paid to the parents of the deceased. If the fine is not paid or recovered, he shall undergo rigorous imprisonment for two years. The Criminal Appeal is allowed as above.

Crl.R.P. No. 171/2004:

In view of the judgment in Crl. Appeal No. 908/2004, no further orders are required in this Criminal Revision Petition. Accordingly, it is closed.