
(1986) 12 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 46 of 1984

Vilas Maruti Sutar

APPELLANT

Vs

The State of H.P.

RESPONDENT

Date of Decision : 01-12-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1986) ILR HP 828 : (1987) 2 RCR(Criminal) 647 : (1987) ShimLC 110

Hon'ble Judges : T.R. Handa, J;R.S. Thakur, J

Bench : Division Bench

Advocate : M.G. Chitkara, for the Appellant; M.S. Chandel, Assistant A.G., for the Respondent

Judgement

R.S. Thakur, J.—This appeal is directed against the order of the learned Sessions Judge, Solan, dated April 30, 1984, whereby the Appellant Vilas Maruti Sutar (hereinafter called as the accused) convicted for the offence of murder u/s 302 of the Indian Penal Code and sentenced to imprisonment for life simpliciter although it is mandatory requirement of law that in case of conviction the accused should have been ordered to pay fine as well.

2. The prosecution story is that that the accused belongs to village Hiralgey, Police Station Gadhinglaj District Kolahpur, State of Maharashtra. He had a wife named Malu Tai who was the daughter of one Shanta Bai Shankar, resident of Gadhinglaj within the same police station. This Malu Tai was formerly married to one Mahadev Babu Bandreker resident of Ajra in the same are of Maharashtra but after sometime she left him and started living with the accused and later on she married the accused without even obtaining divorce from her previous husband which marriage was duly registered at their instance. The accused was in the service in the Indian Army and the said Malu Tai started living with him at various places of his posting. They were both living together while the accused was posted at Balgaon from where on the transfer of the accused to Solan his

wife Malu Tai also came with him to Solan. While serving in the Unit of 12th Bn of Maharatha Light Infantry at Solan, District Solan, Himachal Pradesh, he was allotted a family quarter P. 19/- where he started living with his wife Malu Tai from January 29, 1983.

3. While posted at Solan with his wife Malu Tai, the accused was granted annual leave w.e.f. June 6, 1983 till August 10, 1983. He was also granted free travelling warrant by rail from Solan to Kolahapur on June 3, 1983. He, later on, also obtained concessional travelling warrant for his wife Malu Tai on June 9, 1983. The accused, however, left Solan on annual leave on June 9, 1983 when he was all alone and went to his village in Maharashtra. Three or four days thereafter he went to the house of the mother of Malu Tai, Shanta Bai. Said Shanta Bai enquired from the accused as to why he had not brought Malu Tai with him. The accused told her that she Malu Tai had got down from the train in Delhi while they were on their way, with the promise that she would come later on and that he was under the impression that she had come to her house by that time. He also made some demands from her in the shape of utensils and after holding out threats to her he took away his bicycle lying in the house of Shanta Bai despite her protests.

4. Said, Shanta Bai, getting suspicious on such explanation and behaviour on the part of the accused, made a complaint, dated June 17, 1983 (Ex PM) in writing in the police station Gadhinglaj that she was suspecting a foul play on the part of the accused with regard to her daughter as he had not brought her with him.

5. Meanwhile one Ram Karan, and Shibia Railway Gang Keymen while on railway track patrol duty near Railway Station Koti in H. P. detected a gunny bag below the railway track which was emitting foul smell and on going near it, while peeping through a hole in the gunny bag, they found a human body inside the bag. [The Station Master at Railway Station, Koti was immediately informed of this by them who then informed the Railway Police in this behalf. The Railway Police then registered a case u/s 302 of the Indian Penal Code and immediately arrived on the spot and the bag containing the dead body was then opened in the presence of witnesses S/Shri Lachhi Ram and Om Prakash. At that time it was found that the dead body of a woman was tied with a jute rope in sitting position in an encircling fashion and kept in the gunny bag with six wooden rafters on all sides to give it a shape of a box. Besides, there were also following articles therein : one old Khandoli, two pieces of mats, one torn gunny bag, one basket made of yellow and blue cane, one pair of ladies chappals, three small bundles of cane out of which one was loose, one Lungi cloth, one old chadder with flower embroidery thereon.

6. The dead body was then sent to the Primary Health Centre, Dharampur, on the same day where Dr. Tai Gopal Vohra conducted the post-mortem examination on the said body and prepared his report. In his report the doctor has recorded that green blouse was tightly tied on the thorax, the body had on one Sari of red colour, one Pettycoat of white colour, one underwear with white and pink stripes,

one cord of cotton (taragri) around the abdomen tightly, maggots were present even on the clothes. The body was tied with a rope as stated earlier. There were currency notes of Rs. 405 in an inner pocket of Pettycoat, four being of hundred rupee denomination each and one of rupees five. There was also one b(sic) of pink cord in the pocket, The body was in an advance stage of putrefaction and maggots were present in a large number throughout the body. There were depressed fractures on right parietal bone and frontal bone on right side. The doctor refrained from recording any opinion as regards the cause of death till the report of the Chemical Examiner was received. According to him the duration between death and post-mortem was two to five days. Viscera, that is, the stomach with its contents and pieces of lungs, liver and kidney of the dead body, was preserved and sent to the Chemical Examiner and his report was that they contained organo phosphorus poison and on receipt of this, this Doctor opined that the cause of death in this case was due to organo phosphorus poisoning.

7. As already stated, Shanta Bai had made a written complaint at her local police station Gadhinglaj that she was suspecting foul play at the hands of the accused in respect of her daughter Malu Tai. Consequently, an inquiry in this behalf was entrusted to one Jai Singh Kale Head Constable in the said police station who recorded the statement of a accused at his house where the accused was on annual leave and later on he visited Simla in connection with the inquiry when he came to know that a case u/s 302, I.P.C. had already been registered on the detection of the dead body. Said Kale then handed over this complaint of Shanta Bai also to the Railway Police and went back.

8. The Railway Police then made searches in the house of the accused at Hiralgey. It was also found that during this period, when the accused was on leave, he had contracted a second marriage with One Ambu Bai of village Bajra within the Police Station Gadhinglaj who was the younger sister of the wife of the elder brother of the accused. The Railway Police then also searched the parental house of said Ambu Bai and recovered saris and blouses from each of the two places that is, the house of the accused and that of parental house of Ambu Bai, which, according to Shanta Bai, belonged to her daughter Malu Tai. The police then took into possession those clothes and during investigation said Shanta Bai identified those clothes found on the person of the dead body detected by the Railway Police near Koti Railway Station in Solan District Himachal Pradesh, in an identification parade conducted by the Railway Magistrate at Kandaghat as those of her daughter Malu Tai.

9. Thereafter the accused was arrested by the police on September 6, 1983 when he was presumably serving in his Unit at Solan. When the accused was in the police custody he made a disclosure on September 13, 1983, (Ex. PR) that he had kept some ornaments of gold and silver, that is, Mangal Sutar of gold, one pair of ear tops of gold, one pair of punjab of silver and four foot-finger rings of silver in a bundle in the house of his new-in-laws, that is, the parental house of Ambu Bai in village Bajre, Taluku Ajre, District Kolahpur, Maharashtra, hidden

underneath the ceiling. The accused then led the police to the parental house of Ambu Bai and produced the aforesaid ornaments before the police. The police again get an identification parade held before the Judicial Magistrate Kaudaghat when said Shanta Bai identified these ornaments as those belonging to her daughter Malu Tai.

10. On the basis of this evidence, the accused was sent up to stand his trial under Sections 302 and 201 of the Indian Penal Code. The learned Sessions Judge charge-sheeted the accused accordingly and after full trial of the case, held that the offence u/s 302 of the Indian Penal Code had been proved against him and convicted him thereunder but acquitted him of the offence u/s 201 of the Indian Penal Code.

11. During the course of the trial the prosecution adduced evidence to prove that the dead-body which was found below the Railway track near the Railway Station Koti was of none else but that of Malu Tai. That the accused after murdering he put her dead body in a gunny bag in the manner already described, carried it along with his other luggage in the train which he caught at the Railway Station, Solan and then threw down the gunny bag containing the dead body while the train was proceeding towards the Railway Station Koti at the place where it was later on found. That later on he also made an extra judicial confession to one colleague of his namely, Dhannji Shinde (PW 17) who was also serving in military at Solan and was going on leave to his native place in Maharashtra and they were both to travel in the same train upto Pune, when the accused told him that he had killed his wife Malu Tai.

12. The rest of the evidence is mainly based on the statement of Shanta Bai the mother of said Malu Tai, namely, that the accused soon after his arrival at his native place on annual leave, met her and gave her unsatisfactory replies with regard to the whereabouts of her daughter Malu Tai which aroused her suspicion and she made a complaint in writing in the police station, Gadhinglaj to make enquiries in this behalf. The accused solemnised marriage with another lady Arobu Bai while on leave, the clothes which were on the dead body, found in Solan District, were identified by Shanta Bai as those of Malu Tai and the ornaments recovered by the police as a result of the disclosure statement made by the accused during investigation from the parental house of Ambu Bai were identified by Shanta Bai as those which her daughter Malu Tai used to put on.

13. The accused in his examination u/s 313 of the Code of Criminal Procedure admitted that he and Malu Tai were living as husband and wife at Solan since January, 1983 after he was posted there and was allotted a military quarter over there. He also admitted having gone to his native place on annual leave on June 9, 1983 and soon after having gone to the house of Shanta Bai and having met her there. He, however, denied that he had thrown gunny bag containing dead-body of Malu Tai from the running train or made any extra judicial confession to Shinde (PW 17). He also denied having contracted second marriage with Ambu Bai. His explanation for going home alone was that when he was due to leave

solan on annual leave, said Malu Tai was insistent that she would visit Simla before proceeding to the native place and she decided that she would go to Simla and would come home later on. Meanwhile, he had received his salary of Rs. 1400 out of which he gave Rs. 1,000 to Malu Tai as her expenses and on June 9, 1983, he proceeded to his office to pay some debts due and returned home only at 4 p.m. with a truck to carry him and his luggage to the Railway Station, Solan. On his return, however, he did not find Malu Tai in his quarter and he, therefore, picked up two trunks and one hand bag, put them in the truck and went to the Railway Station in the truck to board the train and besides those two steel trunks and one bag, he had no other luggage with him at that time. He also admitted having procured Railway concession warrant for said Malu Tai from the military authority in June, 1983 but he denied that he ever travelled together with Shinde while going from Solan to Pune.

14. The learned Sessions Judge in the impugned judgment held that it was not proved that the accused had thrown the dead body from the running train which was found near the Koti Railway Station and then acquitted the accused of the charge u/s 201 of the Indian Penal Code. He, however, held that on the basis of the circumstantial evidence on the record the offence u/s 302 of the Indian Penal Code had been fully brought home to him and the circumstantial evidence according to the trial Court was as follows:

(1) Although the prosecution did not try to prove any motive which impelled the accused to do away with the life of Malu Tai but, according to the trial Court, the suggestions that were put forward on behalf of the defence clearly bring out the motive, namely, that the deceased Malu Tai was a woman of loose character which had aroused the suspicion of the accused against her fidelity and virtue and he thus committed the murder of Malu Tai in a pre-planned manner.

(2) The travelling of the accused all alone although he had obtained travel concession warrant for Malu Tai from the military authority and non-surrender of the same when it remained unutilised by his wife.

(3) The wrong information given by the accused to Shanta Bai that Malu Tai had got down from the train at New Delhi when she was coming with him with promise to come later on and he made no efforts to trace the whereabouts of Malu Tai during his long leave nor did he lodge a report anywhere.

(4) That he (accused) contracted second marriage with Ambu Bai.

(5) The recovery of the ornaments of Malu Tai at the instance of the accused from the parental house of his newly wedded wife Ambu Bai.

(6) The identification of the clothes found on the dead body as those of Malu Tai by her mother Shanta Bai and also those which were found at the house of the accused and also at the parental house of his newly wedded wife Ambu Bai.

15. The accused has also adduced evidence in defence which is not of much consequence except that Ambu Bai (DW 5) has gone in the witness-box and

categorically denied, on oath, that the accused has married her. She, however, admitted that her elder sister is married to the elder brother of the accused and that she has been visiting the house of the accused on account of this relation.

16. One Havidar Bhaskar Patil (DW 3) in the police regiment of the Unit of the accused at Solan has stated that he had seen the deceased Malu Tai going alone from her quarter to Bazar at 9.15 a. m. but did not see her coming back thereafter.

17. The military driver of the accused's Unit, Shiv Gonda Patel (DW 1) has stated that on June 9, 1983, he had loaded the luggage of the accused while he was going to the Railway Station to catch the train to go on annual leave and at that time the accused had loaded only two steel trunks and one hand-bag in the said truck.

18. We have carefully gone through the impugned judgment of the trial Court and also considered the evidence on record and feel that there is no sufficient or satisfactory evidence on record to sustain the conviction of the accused and the same deserves to be set aside.

19. As the trial Court has also found, the prosecution evidence in this case is entirely circumstantial. The Hon'ble Supreme Court has categorically laid down the law as to under what circumstances the conviction can be based on this type of evidence. In Ram Gopal Vs. State of Maharashtra, the Supreme Court has observed:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt, is to be drawn should, in the first instance, be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

20. The same Hon'ble Court in Kali Ram Vs. State of Himachal Pradesh, has made the following pertinent observation:

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Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with

the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort surmises, conjectures or fanciful considerations...

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether.

21. In short, while appreciating the circumstantial evidence the court must keep in mind that the chain of circumstances making one whole is complete without even a single weak link and it must impel the Court to form a hypothesis which is consistent with only the guilt of the accused and with no other conclusion. While applying these tests to the circumstantial evidence, in the instant case, we feel that the learned trial Court has gone completely off the mark and come to an erroneous findings.

22. In the first place we have noticed with certain amount of surprise that although the case of the prosecution as based on the medical evidence, before the Court was that the death of the lady in question was due to poisoning by administering to her organic phosphorus poison, the trial Court, however, has not cared to concentrate on this aspect of the matter and has rather held that the accused has caused the death of Malu Tai in "a brutal violent manner which was pre-planned".

23. Now as regards the oral evidence on record, we have no hesitation in holding that there is no satisfactory evidence on record to show that the dead body in question was of none else but that of Malu Tai, the wife of the accused. We have seen the photographs of the dead-body which were taken on the spot at the instance of the police and these photographs clearly show that the face part of the dead-body was not at all identifiable and the same was in a very advanced stage of decomposition. The Doctor who performed the postmortem examination has not been able to opine as to whether the injuries on the body were ante-mortem and his categorical opinion was that it was a death by poisoning. He has also stated in the witness-box that it was not possible to identify the dead body at the time of the postmortem examination.

24. Similar is the statement of the Investigating Officer, S.I. Bhopal Singh (PW

27) while he was in the witness-box, namely that the dead body was not capable of being identified.

25. The prosecution has failed to prove, as has been held by the trial Court as well that the gunny bag containing this dead body was thrown by the accused from the running train. The lower court has, however, held that this dead body was of none-else but Malu Tai on the ground that the clothes which were found on the person of the said body had been identified by her mother Shanta Bai (PW 8) as these of Malu Lal. There is no doubt that according to prosecutions some clothes were collected from the house of the accused and also from the parental House of Ambu Bai which according to Shanta Bai were of Malu Tai. Shanta Bai also in the identification parade identified the clothes which were found on the dead body in question as those of Malu Tai. This sort of evidence regarding identification parade, in our opinion, however, is not at all convincing Said Malu Tai was away from Shanta Bai atleast since January, 1983 while the incident took place in the first week of June, 1983. In these circumstances it is not possible that Shanta Bai would have known that these were the clothes which Malu Tai used to put on even after a period of six months, especially when they were of common pattern found in the openmarket, without any particular identification mark connecting them with Malu Tai.

26. Then another circumstance which weighed with the trial Court is that the accused had told a lie to Shanta Bai when he went to her place, namely, that Malu Tai had got down from the train at Dehli. It is apparent from her complaint (Ex. PM) that she had not stated therein particularly this factum that according to the accused, Malu Tai had detrained at Delhi as therein she has only stated that the accused was not giving satisfactory replies when she enquired from him about the whereabouts of Malu Tai. However, we feel that if the accused had any guilty conscience he would not have gone and met Shanta Bai just 2/3 days after his arrival at her house himself as he did and he also would not have behaved in the manner he is said to have done according to Shanta Bai, namely, threatening her so as to invite her hostility when he had done away with the life of her daughter just a few days back. His attitude rather would have been that of keeping her in good humour. It is also highly improbable that in these circumstances he would have openly contracted a second marriage with Ambu Bai as the prosecution has tried to prove and as has been held by the trial Court. Even if his intention was to contract matrimonial relation with Ambu Bai, he would have positively refrained from doing so, so as not to arouse the suspicion of the concerned persons There is no doubt that the prosecution has even produced a marriage documentation register maintained by oram sewak of the area in which the parental house of Ambu Bai is situate. We, however, feel that this register is of a nature which hardly deserves any credibility or authenticity as such a document could be forged at any time wherein in all the twelve entries in the register even the name of the informant has not been given and the register pertains to the period between January 1983 to June 1983 only. Further if at all, such entry should have been in the Panchayat register of the Panchayat of the

accused and not that of the Panchayat of the parents of Ambu Bai.

27. We also feel that the evidence with regard to the recovery of ornaments, namely, golden "mangal sutra", ear tops and the silver Punjab and four foot-finger rings were recovered at the instance of the accused from the parental house of Ambu Bai carry any conviction or credibility and it appears to be a product of the fertile imagination of the Investigating officer only. If they were to be kept at the house of Ambu Bai, naturally the accused should have given those ornaments to Ambu Bai if he had married her and in case they were to be kept secret or hidden for sometime, nothing prevented the accused from doing so by keeping them at some safe place at his own house and it does not stand to reason that they should have been kept in that fashion in the parental house of Ambu Bai without the knowledge of the inmates of the house and the recovery appears to have been shown to be effected from there only with a view to connecting the accused with Ambu Bai.

28. We are also not satisfied with the evidence with regard to the identification of those ornaments as those of deceased Malu Tai by Shanta Bai as it appears to be a mere formality since they were mixed up, even recording to the Judicial Magistrate holding the identification parade, with the newly prepared ornaments from the shop of a goldsmith and as such it was not difficult to have picked up the ornaments in question which were admittedly old, by anybody.

29. The only circumstance which thus remains outstanding, against the accused which is material to a considerable extent, is the fact that although upto June 9, 1983 the accused and Malu Tai were admittedly living together in their allotted quarter at Solan, but when he went home on annual leave on that day he was all alone. This single incriminating circumstance, howsoever strong, however, cannot be held as sufficient to sustain the conviction of the accused since this is only one link of the chain and the rest of the links constituting the chain are absolutely weak and vulnerable.

30. It is also clear that even this factor not inconsistent with the innocence of the accused. It has come in evidence of Maj. P. K. Sanyal (PW 16) of the regiment of the accused at Salan Unit at the relevant time, that the accused had remained at the training camp while posted at Solan from March 7, to May 31, 1983, away from the headquarters and during this period Malu Tai, his wife, had remained alone at his quarter at Solan. During this period it was observed by the persons on duty at the gate check post of the tertiary residential area that said Malu Tai used to go out often from her quarter and sometime did not even return at night and infact some evidence has come on record that the military authorities had directed the accused to leave Malu Tai in his village.

31. In these circumstances the possibility cannot be ruled out that when the accused was ready to go on annual leave, Malu Tai might have suspected that the accused would leave her behind after the annual leave was over when he will come back to rejoin his post which was not acceptable to her and she made

arrangement to elope with somebody and thus left the quarter of the accused in his absence.

32. The evidence of Havildar Bhaskar Patil, (DW-3) is on record that he had seen said Malu Tai going out of the check gate alone from the quarter of the accused at 9.15 a.m. on June 9, 1983 and did not see her returning thereafter.

33. It is also not understandable that if the accused had been responsible for the death of Malu Tai and the dead-dody in question was hers, why he should have packed with her the cane made basket and bundles of small cane and the chappls and while snatching away all the ornaments including the rings in her feet-fingers, he left out a sum of Rs. 405 in the packet of her Pettycoat which pocket he was the only person to have known. It rather creates the impression in the mind as if she went to the house of some body while she was on shopping and it is there that this mischief was done if at all this was the dead-dody of Malu Tai.

34. It is also pertinent to note that although the specific issue before the trial Court was whether the accused the death of Malu Tai by poisoning her with organo phosphorus but strangely enough the Court has erroneously sidetracked this important aspect. The law with respect to the poison cases has again been clearly pronounced by the Supreme Court in Ramgopal's case (supra) in para 15 in the following terms:

Where the evidence is circumstantial the fact that the accused had motive to cause death of the deceased, though relevant, is not enough to dispense with the proof of certain facts which are essential to be proved in such cases. Three questions arise in such cases, namely, (firstly) did the deceased die of the poison in question? (secondly) had the accused the poison in question in his possession? and (thirdly) had the accused an opportunity to administer the poison in question to the deceased? It is only when the motive is there and these facts are all proved that the Court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.

In the instant case there is no iota of evidence on any of the points enumerated above except that the cause of death was by poisoning and the poison used was organo phosphorus. It may also be observed that the Chemical Examiner in his report (Ex. PCC) has recorded that there was organo-phosphorus compound found in the contents of viscera but has failed to measure and record the quantity of the poison therein and the Supreme Court in para 21 of the said judgment in Ramgopal's (supra) has clearly held that this omission is a serious deficiency in a case of this nature and in this context their lordships have also referred to the Laylor's opinion in his 12th Edition Medical Jurisprudence, that it was possible to absorb a fatal dose suicidally but it is not likely to occur accidentally, or to be used with intent; to murder. The prosecution has failed to prove as to how the accused administered this organo phosphorus to Malu Tai when the accused intended to murder her and succeeded in the mission and how

he came by this poison.

35. As regards the motive although the lower Court has also held that the prosecution had not set forth any motive which actuated the accused to murder Malu Tat. It, however, picked up this motive by the trend of cross-examination in defence when it was brought out that the said Malu Tai was of loose character. We, however, feel that the trial Court has not been right in drawing this conclusion. There is no doubt that the defence has brought this on record that when the accused was away from the headquarter on training from March 7, to May 31, 1983 and Malu Tai was living alone in his quarter at Solan, she used to go out alone and sometime did not return home even at night. The accused, however, nowhere specifically stated that said Malu Tai was of loose character or he suspected her fidelity. In fact there is no evidence on record that when the two spouses were living together at Solan they ever had any row to the knowledge of any body. On the contrary even Shanta Bai has admitted while in the witness-box that she was regularly receiving letters from Malu Tai and the accused and none of them ever complied against the other in those letters to her. Rather according to her they had always been living a happy marriage life.

36. Thus in these circumstances the evidence on motive part also does not appear to be satisfactory at all.

37. In view of the above discussion, we held that the prosecution has failed to prove the offence u/s 302 of the Indian Penal Code against the accused and, therefore, while setting aside the judgment of the trial Court, dated April 30, 1984, we acquit the accused and order that he be set at liberty forthwith if not required in any other case. The case property be disposed of as ordered by the trial Court.