

PETITIONER:
BHAGWAN SWARUP AND ANR.

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT 28/08/1991

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
PANDIAN, S.R. (J)

CITATION:
1991 AIR 2062 1991 SCR (3) 820
1991 SCC (4) 54 JT 1991 (6) 309
1991 SCALE (2) 414

ACT:
Penal Code, 1860--Sections 302, 201 and 120-B---Charges--Conviction by High Court--Modification of sentence by convicting accused no. 1 u/s. 202. IPC for making illegal omission to inform the authorities and acquitting the accused of the offences by Supreme Court u/s. 2(a) of the Supreme Court (Enlargement of General Appellate Jurisdiction) Act. 1970.

Supreme Court (Enlargement of General Appellate Jurisdiction) Act, 1970--Section 2(a)--Appeal--Appreciation of evidence--conspiracy cannot be proved by conjectures and surmises--Absence of evidence to connect accused with the offences--Modification of sentence by convicting accused no. 1 u/s. 202, IPC. for making illegal omission to inform the authorities.

Evidence Act, 1872---Section 3--Appreciation of evidence--Failure of prosecution to prove guilt of accused--Conviction of accused no. 1 u/s. 202, IPC for making illegal omission to inform the authorities.

Penal Code, 1860---Section 202--Ingredients to prove by prosecution indicated.

Penal Code, 1860--Sections 202, 306--Suicide--Whether offence of abatement punishable--Whether father-in-law has obligation to inform the authorities the suicide of daughter-in-law.

HEADNOTE:

The appellants-father and son (A 1 and A 2)-were tried under Sections 302, 201 and 120-B I.P.C. for causing murder of the wife of A.2.

The deceased was married to A 2 in 1961. Two sons and one daughter were born to them. Their matrimonial life was not smooth. There were frequent quarrels. It was in the evidence that the deceased was not healthy both physically and mentally. She was also admitted in

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mental hospital once. She used to confine herself to her room and she appeared to be somewhat mentally deranged.

On 18.3.82 the dead body of the deceased was found in her room in the house of the accused. At that time admittedly A 2 was not in the house and he was at Suratgarh. On

being informed about the death, A 1 sent for a doctor, who examined the deceased and declared her to be dead. Thereafter A 1 informed P.W. 5, the father of the deceased. The brother of the deceased, P.W. 6 told P.W. 5 that he had seen the dead body lying in the room and that it was giving rotten smell. P.W. 6 lodged a report before the Police.

The investigation was taken up, held the inquest, examined the witnesses and sent the dead body for post-mortem. The Doctor P.W. 2, who conducted the post-mortem, opined that the death was due to head injury and pressure in the neck region.

After completion of the investigation, the charge-sheet was laid. 22 witnesses were examined on behalf of the prosecution. The accused denied the offences. A 1 stated that he was away from 14.3.1982 onwards and was at Jodhpur in his daughter's house. In support of his plea D.W. 1, the neighbour of A 1's daughter and his grand-daughter, D.W. 2, namely the daughter of A 2 and the deceased were examined. A 2 stated that he was at Suratgarh from 11.3.1982 onwards. Both of them denied the allegations of the prosecution.

The trial court held that there was no evidence of conspiracy between the A 1 and A 2 for murdering the deceased and the circumstances relied upon by the prosecution were hardly sufficient to connect them with the murder and the accused were acquitted by the trial court.

The State preferred an appeal before the Division Bench of the High Court and the High Court convicted them under Section 120-B and Section 302 read with 34 of the I.P.C. and sentenced each of them to undergo imprisonment for life, against which this appeal was preferred under Section 2(a) of the Supreme Court (Enlargement of General Appellate Jurisdiction) Act, 1970.

The appellants contended that the High Court acted in prejudice and suspicion and that there was absolutely no material to prove the conspiracy and much less to connect the two accused in any manner with the murder.

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The respondent supported the findings of the High Court and also contended that the accused would at least be liable of having committed other offences.

Disposing of the appeal by making modification in the sentence, this Court,

HELD: 1. The second accused was not present in the scene-house, where the occurrence took place from 11th to 20th March, 1982 and that the first accused was at Jodhpur in his daughter's house from 14.3.82 to 17.3.82 and returned to Jaipur on 18.3.82. Therefore, they were not present in the house when the deceased died. The Medical Officer, P.W. 2 could not say definitely as to whether the death has occurred before four days of his examination and there is absolutely no evidence either circumstantial or direct to hold that the death took place on 11.3.82 itself as found by the High Court. The evidence of D.W. 2 who is none other than the daughter of the deceased and was very much in the house throughout categorically stated that her mother was alive on 15th March, also. Apart from D.W. 2 the only other inmate of the house during the crucial period was the mother-in-law of the deceased who was not even charge-sheeted. The letter Ex.P-15 written by the first accused does not in any manner incriminate them and the High Court has grossly erred in holding that A 1 and A 2 entered into conspiracy merely on the basis of conjectures and surmises drawn from the letter. P.Ws. 4, 9 and 10 have not supported the prosecution case and the remaining evidence does not in any manner implicate A 1 and A 2 and the other remaining inmate of the

house, the mother-in-law of the deceased, was not even suspected. Therefore having given anxious and careful consideration to the facts and circumstances of the case it is felt by the Court that the prosecution has miserably failed to bring home the guilt of the appellants. [835A-E]

2. Section 202 I.P.C. punishes the illegal omission of those who under law are bound to give information in respect of an offence which he is legally bound to give, particularly being the head of the family. Under this provision it is necessary for the prosecution to prove (1) that the accused had knowledge or reason to believe that some offence had been committed (2) that the accused had intentionally omitted to give information respecting that offence and (3) that the accused was legally bound to give that information. [836G-H]

3. A 1 was at least under an obligation to give information about the death of the deceased since the same was unnatural. From the
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medical evidence, it is clear that it was not a natural death and consequently the death should at least be noted as one of suicide. Even in the case of suicide an offence of abetment punishable under Section 306 is inherent. Therefore even in the case of a suicide there is an obligation on the person, who knows or has reason to believe 'that such a suicidal death has occurred, to give information. [835G-836A]

4. In the instant case A 1 returned to his house where the dead body was lying on 18.3.82 and the circumstances clearly go to show that he had knowledge that the deceased died of an unnatural death. Therefore he had knowledge or at least had reason to believe that an offence had been committed even if, at that stage, he thought that it was only a suicide. Therefore it was his bounden duty particularly as head of the family to inform the authorities. He omitted to do so. On the other hand, he went about telling that the deceased was still alive and her condition was serious. But when P.W. 6, the brother of the deceased, came to the house and enquired, A 1 told him that the body would be cremated and he intended to do so without informing the authorities. Therefore all the ingredients of Section 202 are made out against him and he clearly committed the offence punishable under this Section at that stage. [838B-D]

5. The fact that A 1 himself was made an accused in other offences subsequently does not absolve him of his complicity in respect of the offence punishable under Section 202 I.P.C. [838D]

Kalidas Achamma v. The State of A.P S.H.O. Karimnagar, I Town P.S., [1987] 2 ALT 937, Approved.

Harishchandrasing Sajjansingh Rathod and Another v. State of Gujarat, [1979] 4 SCC 502, Distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 303 of 1984.

From the Judgment dated 19.5.1984 of the Rajasthan High Court in D.B. Criminal Appeal No. 129 of 1983.

R.K. Jain, R.P. Singh and R.K. Khanna for the Appellants.

Sushil Kumar and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

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K. JAYACHANDRA REDDY, J. There are two appellants. They are father and son respectively and they figured as A 1 and A 2 before the trial court. They were tried for offences

punishable' under Sections 302, 201 and 120-B I.P.C. for causing murder of Madhu Saxena, wife of A 2 and daughter-in-law of A 1, the deceased in the case. They were acquitted by the trial court. The State preferred an appeal before the Division Bench of the High Court and the Division Bench of the High Court convicted them under Section 120-B and Section 302 read with 34 of the I.P.C. and sentenced each of them to undergo imprisonment for life. They have preferred this appeal under Section 2(a) of the Supreme Court (Enlargement of General Appellate Jurisdiction) Act, 1970.

The deceased was married to A 2 in the year 1961. Two sons and one daughter were born to them. A 1, father of A 2, was a practising lawyer after retiring from the Government Service. The matrimonial life of the deceased and A 2 was not smooth. There were frequent quarrels. The accused lived in their own house alongwith the deceased. It is in the evidence that the deceased was not healthy both physically and mentally. She was also admitted in mental hospital once. She used to confine herself to her room and she appeared to be somewhat mentally deranged. The daughter of the deceased, who was examined as D.W. 2, aged 13 years was studying in 10th Class and she was also living in the same house. On 18.3.82 the dead body of the deceased was found in her room in the house of the accused. At that time admittedly A 2 was not in the house and he was at Suratgarh. On 'being informed about the death A 1 sent for Dr. Madan Lal Arora, who examined the deceased and declared her to be dead. Thereafter A 1 informed P.W. 5, Jagmohan Prasad, the father of the deceased. P.W. 5 went there and enquired. A 1 told P.W. 5 that the deceased be cremated at 9 A.M. The brother of the deceased told P.W. 5 that he has seen the dead body lying in the room and that it was giving rotten smell. P.W. 6 lodged a report before the Police. P.W. 22 took up the investigation, held the inquest, examined the witnesses and sent the dead body for post-mortem. The Doctor P.W. 2 conducted the postmortem. He found that the body was giving rotten smell and the skin here and there was peeled off, nails were loose and the tongue was found in between the teeth. He found an injury on the head. He also found that some of the organs were decomposed and noticed greenishbrown discolouration on the neck. He opined that the death was due to head injury and pressure in the neck region. He, however, sent the tissues of the trachea though decomposed and a piece of neck skin and also viscera for histopathology and for chemical analysis, but the

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pathologist could not give opinion regarding the piece of skin and the tissues of the trachea. The pathologist noted that the skin was discoloured and that the tissues and the muscle attached to the trachea showed no abnormality. The Doctor P.W. 2 opined that the head injury was caused by blunt weapon; and that death is result of neck injury. The pressure on the left and front of the neck was apparent. After completion of the investigation, the charge-sheet was laid. 22 witnesses were examined on behalf of the prosecution. The accused denied the offences. A 1 stated that he was away from 14.3. 1982 onwards and was at Jodhpur in his daughter's house. In support of his plea D.W. 1, Dr. Ram Krishna Mehta, the neighbour of A 1's daughter, was examined. He also examined his grand-daughter D.W. 2, namely the daughter of A 2 and the deceased. A 2 stated that he was at Suratgarh from 11.3.1982 onwards. Both of them denied the allegations of the prosecution.

The case registered rests on circumstantial evidence:

The trial court held that there was no evidence of conspiracy between the A 1 and A 2 for murdering the deceased. It further held that there is no legal proof also that the Circumstances relied upon by the prosecution are hardly sufficient to connect them with the murder. The trial court, however, severely criticised about the ill-treatment and hard behaviour of A 1 and A 2 towards the deceased.

The High Court, however, took a different view. The High Court mainly relied on the evidence regarding the ill-treatment of the deceased by A 1 and A 2 and held that the accused had strong motive. The High Court has also referred to the earlier incidents in some of the letters. The High Court accepted the medical evidence in to and reached the conclusion that the death was homicidal and due to asphyxia due to head injury and pressure on the neck. Finally, the High Court, relying on the conduct of the accused after coming to know about the death of the deceased, reached the conclusion that the two accused conspired and got the deceased murdered and accordingly convicted them under Sections 302 read with 34 I.P.C. and 120-B I.P.C.

Shri R.K.Jain, the learned counsel for the appellants submitted that the High Court has merely acted on prejudice and suspicion and that there is absolutely no material to prove the conspiracy and muchless to connect the two accused in any manner with the murder.

The prosecution examined 22 witnesses. P.W. 1 an Assistant
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School teacher in Jaipur and related to the deceased deposed that she attended a dinner in the house of the deceased and A 2 and in the year 1978 when the deceased came to her house she was having some spots of beating by sticks on her back and the deceased told P.W. 1 that she was beaten by her husband. On 18.3.82 P.W. 1's neighbour told her that there was a telephone message from A 1 that the deceased was about to die. On that P.W. 1 and others went to the house of the deceased. They opened the room from where bad smell was coming and in that room they saw the dead body of the deceased which was decomposed. A 1 who was present there told them that they would cremate the dead body that night. On that P.W. 5, the husband of P.W. 1 and the brother of the deceased objected to. P.W. 1 has also mentioned about other incidents of cruel treatment meted out to the deceased. P.W. 2 is the Doctor, who conducted the post-mortem and we shall advert to his evidence later. P.W. 3 is the elder sister of the deceased. She only stated that she got the information about the death of the deceased. P.W. 4 is the son of the deceased and A 2. He deposed that on 11th March, 1982 his father A 2 came with him to the bus-stand to see him off. P.W. 4 met the deceased before leaving on the evening of 11th March, 1982 and talked to her. At that time the condition of the deceased was very weak and she was unhealthy. P.W. 4 also deposed that his father A 2 was to go to Suratgarh by the evening of 11.3.82. This witness was treated hostile. In the cross-examination by the defence this witness stated that his sister Gianwati who was examined as D.W. 2 told him that she went regularly to the room of the deceased to give food from 11.3.82 to 15.3.82 and that on 16.3.82 D.W. 2 did not meet the deceased due to headache and on 17th and 18th March the deceased did not respond when D.W. 2 called her. P.W. 4 further deposed that D.W. 2 also told the same to her grand-mother. P.W. 5 is the father of the deceased. He also deposed about the ill-treatment of the deceased by the accused and their demand for dowry. He further deposed that the neighbour told them that he received a telephone message from A 1 that the deceased was '

about to die. Thereupon P.W. 5 sent his son P.W. 6 to A 1's house. Later he was told by A 1 who came to his house that the deceased died and the Doctor has declared her dead. Thereupon P.W. 5 wanted to know the name of the Doctor. Thereupon A 1 told him that the deceased would be cremated. A little later P.W. 6 also came and told him that the deceased had died before many days and her dead body was giving rotten smell. P.W. 6 is brother of the deceased and son of P.W. 5. He also deposed about the ill-treatment meted out to the deceased. He further stated that on 18.3.82 on receiving the information about the serious condition of the deceased he went to house of

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the deceased and he found that the deceased had already died and the A 1 told him that the dead body would be cremated, whereupon he informed his father P.W. 5 and then lodged a report before the police. The police arrived and prepared a panchnama. P.W. 7 is the neighbour of the accused. He only attested the site plan prepared by the police. P.W. 8 is a practising Doctor and he deposed that on 18.3.82 A 1 came to him' at about 5.30. P.M. and told him that his daughter-in-law namely the deceased was in serious condition. Thereupon he went to the house and saw the deceased. He examined the deceased and declared her to be dead. P.W. 9 also was examined to speak about the cruelty but he was treated hostile. P.W. 10 also belongs to the same locality. He only deposed that the body was emitting foul smell and he signed the inventory prepared by the police. P.W. 11 is a photographer who took the photographs of the room and the dead body. P.W. 12 is Gurubux Saxena who got the telephonic message from A 1 that the deceased was seriously ill and thereupon he informed P.Ws 1, 5 and 6. P.W. 13 is the cousin of the deceased. He also deposed about the cruelty meted out to the deceased. He further deposed that on 18.3.82 the deceased died and he was asked by P.W. 5 to go to the house of the deceased. He was informed by A 1 that the body would be cremated. Thereupon he and P.W. 6 went and gave a report to the police. P.Ws 14 to 21 are the formal official witnesses. Out of them P.Ws 17, 18, 19 and 20 are examined who spoke about the movements of A 2. The sum and substance of their evidence is that A 2 was posted as expert of plant protection in Suratgarh and that leave was granted to him on 11.3.82. This evidence may not be very much relevant because it is not the prosecution case that A 2 was present in the house at the time of the death of the deceased. P.W. 22 is the Sub-inspector who investigated the case. He deposed that on receipt of the report he went to the place of occurrence, held the inquest and sent the dead body for postmortem. He also speaks the seizure of some letters.

In the examination under Section 313 Cr. P.C. both the accused stated that they are innocent. A 1's case was that he was away at Jodhpur from 15th March, 1982 onwards and was staying in her daughter's house and he came to Jaipur only on 18th March, 1982 and then he was told about 'the death of the deceased. Thereupon he called the Doctor P.W. 8 who examined and pronounced the deceased to be dead. He denied about the allegations of ill-treatment of the deceased. A 2 stated that he married the deceased in the year 1961 and they were blessed with two sons and one daughter. He also stated that he was a Gazetted Officer in Agriculture Department and he was transferred to various places and he also took the deceased with him. He further

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stated that the deceased was sick and unhealthy and was staying at Jaipur. He also stated that his daughter used to

give food to the deceased. On 11.3.82 he left for Suratgarh and later he came to know about the death of the deceased. The accused examined D.Ws 1 to 3 on their behalf. D.W. 1 is a Doctor at Jodhpur. He deposed that he knew A 1 and that he was staying in his daughter's house in Jodhpur from 15th March, 1982 to 17th March, 1982. D.W. 2 is the daughter of A 2 and the deceased aged about 13 years. She in general stated that her mother was sick and unhealthy and used to confine herself to the room and she used to give food to her. She also stated that she gave food to the deceased on 15.3.82 and that she could not give food on 16.3.82 due to her own sickness. Then on 17th and 18th March, 1982 her mother did not talk to her, therefore she returned with the food. She also stated that A 1 went to Jodhpur on the evening of 14th March and returned from Jodhpur on 18th March, 1982. On that day they found that the deceased was not talking and two ladies who came to meet the deceased, told that there was something wrong. When her grand-father A 1 returned from Jodhpur he sent for a Doctor and the Doctor after examining pronounced the deceased to be dead. D.W.2 further stated that the relations between the deceased namely her mother and grand-mother were not good. In the cross-examination she affirmed that she fell ill on 16.3.82 after coming from school and therefore could not give food to her mother. She denied the suggestion that the body was decomposed even on 16th and 17th March, 1982. D.W. 3 is the son of A 1 and brother of A 2 residing at Jodhpur. He also deposed that A 1 came to Jodhpur and stayed from 15th onwards upto 17th March, 1982.

From the above resume of evidence it is clear that the case rests entirely on circumstantial evidence. The dead body was found in the house of A 1 and A 2, where admittedly the deceased was also living but she used to confine herself to that room where the dead body was found. She was sick and unhealthy and that she was not even coming out of the room. From the evidence it is also clear that the food was given to her in the room itself and she was not even going out to answer the calls of nature. Some of the witnesses, no doubt, have deposed that the accused used to ill-treat the deceased. But the main question is whether A 1 and A 2 conspired, as held by the High Court and got the murder committed. From the record it is clear and it is also not disputed that A 2 was not in the house and that A 1 also left Jaipur and was staying at Jodhpur with his daughter upto 17th March, 1982 and came to Jaipur only on 18th March, 1982. Therefore he was also not in the house at the time of death. There is no other evidence to

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show that as to who could have caused the death of the deceased if it is held to be homicidal. The trial court has doubted the prosecution case that the death was homicidal. The High Court after having elaborately examined the medical evidence reached the conclusion that it was homicidal. But even assuming that it was homicidal, there is absolute paucity of evidence, suggesting even remotely as to who could have caused the death. Though, in our view, it is not strictly necessary in this case to decide the nature of death because even assuming it to be homicidal, the accused A 1 and A 2 cannot be convicted unless there is other material to connect them with the crime either directly or indirectly. However, we shall first consider the medical evidence regarding the cause of the death.

P.W. 2 Dr. M.R. Goel examined the dead body on 19.3.82 and found 10 injuries which were ante-mortem. Many of them were in the shape of bruises and swellings. He found the

dead body as highly decomposed and had reached an advanced stage of putrefaction. In his opinion the death was due to the injury on the head and pressure on the neck due to asphyxia. He was cross-examined at length. He admitted that since the brain was decomposed and was in semi-liquid condition no injury therein could be traced. He also admitted that the swelling of the eye was not due to the injury on the forehead. Coming to the injury on the neck, the Doctor stated that no injury was found on the bones of wind pipe and that portion also was decomposed. In further cross-examination he admitted that he did not make the culture of the maggots crawling on the head. He also stated that he could not say definitely whether the death in the circumstances should have occurred before four days. He, however, denied the suggestion that he could not form a definite opinion. As far as this medical evidence is concerned, the trial court also considered the same at length. The learned Sessions Judge noted the details in the post-mortem certificate Ex. P, 1. There he found against the column cause of death, the Doctor has put only a question mark. It is also noted in the postmortem certificate that P.W. 2 sent a part of the neck and viscera for chemical and histopathological examination. After considering the whole evidence of the Doctor, the trial court was of the opinion that it was very difficult to say that the injuries on the head were antemortem. In nature and at any rate P.W. 2's evidence has not proved beyond reasonable doubt that the death of the deceased was due to injuries causing asphyxia and that the death was homicidal. The High Court, on the other hand, has also noted that the death of the deceased was 4 to 8 days' earlier, as shown in the post-mortem certificate. The learned Judges observed thus:

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"It is to be noticed that Dr. M.R. Goyal, who conducted the post mortem examination, is not a novice but a 'senior Medical Jurist of the S.M.S. Hospital. According to him there was' sub-dural hammatoma over occipital region. Bruises were found on the forehead left side

We have carefully examined the reasons given by the Sessions Judge for holding that the prosecution has failed to prove that it was homicidal death In 'our considered opinion, all these injuries were anti-mortem in nature."

The learned Judges thereafter explained away the discrepancies between the post-mortem and the medical evidence. We may observe that the learned Judges of the High Court have bestowed considerable part of the judgment on the aspect of medical evidence and ultimately held thus:

"In substance, we are convinced that it was a case of homicidal death. We cannot accept the finding of the trial court on this aspect of the case and have got no hesitation in reversing it and holding that the finding is not based on just and proper appreciation of the evidence."

We have also gone through the medical evidence carefully and we may observe that 'we are unable to hold that the view taken by the learned Sessions Judge is altogether unreasonable. However, for the purpose of this appeal it may not be necessary for us to go through the details of the medical evidence. Even accepting that the death was homicidal, we cannot on that ground alone hold the appellants guilty. The

prosecution has to, satisfactorily and beyond reasonable doubt, establish that the two accused conspired and pursuant to that conspiracy, the offence was committed.

We have already given a brief resume of the evidence adduced on behalf of the prosecution. We have noticed that both the accused were not in the house on the day the occurrence is said to have taken place even assuming that, the same took place on 14.3.82. the evidence of D.W. 2 who is the only inmate of the house that was examined and whose evidence cannot be brushed aside establishes that the occurrence probably took place on 15th or 16th March, 1982. It is only on 18.3.82 that the dead body was discovered and it is only on that day the A 1 came to his house, at Jaipur from Jodhpur and A 2 admittedly was

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away on official duty- The D.W. 2 also speaks to the same. The High Court, however, drew some inferences based on the alleged conduct of the accused and held that the two accused conspired to kill the deceased. In the first instance the High Court held that the accused has a strong motive to get rid of the deceased. For this reliance is placed on the evidence of some witnesses who spoke about the cruel treatment meted out to the deceased by the accused. The learned Judges have also relied on some letters written by the deceased. P.W. 6, the brother of the deceased deposed that the two accused used to be angry with the deceased and they did not allow him and his family members to see the deceased. Reliance is placed on the evidence of P.W. 5 who spoke about the demand of money. The learned Judges of the High Court mainly relied on this evidence to infer that the accused had motive to do away with the deceased. The High Court was not prepared to place reliance on the evidence of P.W. 4 and D.W. 2 who did not support the theory of cruelty. The High Court, after considering the above evidence, observed as under:

"Now the question is whether in these circumstances although there are circumstances of strong motive and of cruelty and of strong desire on the part of accused Bhagwan Swarup and Parmeshwar Swarup to get rid of Madhu, there is any further evidence of other circumstances, by which it can be said that no other hypothesis except the guilt of the accused is possible in the present case."

Then the learned Judges proceeded to consider the evidence of P.W. 8 and others. P.W. 8 is a local Doctor who deposed that A 1 informed him in the evening of 18.3.82 that his daughter-in-law was serious. He went and examined the deceased and pronounced her to be dead. P.W. 8 also deposed that the body was giving bad smell and it was also in a decomposed condition. Then the High Court relied on the evidence of P.W. 12 who stated that he received a telephonic message from A 1 stating that his daughter-in-law was at her last breathing and he must inform P.W. 5, the father. Then the High Court proceeded to consider some other circumstances which took place from 11th March onward namely A 2 leaving on official duty. The High Court suspected that A 2 designedly left Jaipur to Suratgarh and also surmised that A 2 marking his attendance in the register at Suratgarh was with a view to create evidence of alibi. Then there is reference to a letter Ex. P. 15 written by A 1 to A 2 on 18.3.82 and according to the learned Judges, this letter was an effort to show that the deceased was alive even after 11th March and according to learned Judges Ex. P. 15 a letter of A 1

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on the alleged death of the deceased, written by him to his son is a significant feature. This letter is dated 18th March, 1982. In that A 1 has simply informed A 2 that the deceased breathed her last and that Doctor, P.W. 8, pronounced her dead and that on the next day they are going ahead with cremation. This letter which is on a post-card, is the most crucial feature, according to the High Court and that its contents show that both A 1 and A 2 were guilty-conscious. We think we need not refer to the further surmises made by the High Court. Suffice it to say that in the rest of the entire judgment only such suspicions and surmises have been mentioned or drawn to reach a conclusion that A 1 and A 2 conspired.. At one stage the learned Judges observed thus:

"The more and more we read this letter Ex. P. 15 dated 18.3.82 more and more we are convinced that it was a case of pre-planned, pre-determined conspiracy of committing murder of Madhu, which was done on 11th March, 1982 by both accused, who were anxiously waiting the time when they could get rid of her. It is also not without significance that Suratgarh is in Ganganagar District and a far. place from Jaipur and post-card would not reach there at least before 24 hours as it reached on 20th March and further even if telephone message is sent one would take at least 12 to 18 hours to reach this place. The fact that cremation was decided for the morning and the information was sent in the night only goes to show that since the death was a result of murder, in which both the accused were involved, there was no occasion to wait for son, who was husband of the ill fated unfortunate lady Madhu to perform last rite or see her face at least before she is put on fire. The merciless inhuman approach exhibited by this letter is heart beating, hair raising and society lacking and conscious shocking and we are convinced that such a conduct would not have been possible but for the fact that the object of conspiracy of Bhagwan Swarup and Parmeshwar Swarup was achieved by putting an end to the life of Madhu, which was done on 11th and during all this time, all that Parmeshwar and Bhagwan Swamp were being were the unsuccessful effort to conceal the murder of helpless lady and to create a plea of alibi or pretended the natural death. We are, therefore, convinced that these circumstances, if taken as a whole, proves beyond all reasonable doubts that Bhagwan Swarup and Parmeshwar Swarup entered into a criminal conspiracy

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to commit the murder of Madhu and with this abode intention, common object to fulfill the object of conspiracy they committed the murder of Madhu in their house on 11th March, 1982, by causing 11 injuries on her person after they had made it sure that the son Prakash Swamp leaves for Ajmer in the morning and then Parmeshwar Swarup left for Suratgarh in the evening and Bhagwan Swarup ultimately left for Jodhpur on 14th. These were all preplanned

pre-determined well calculated steps of the conspiracy to commit the murder and then to avoid its detection by these two accused, who had deep rooted patience and hatred towards the unfortunate lady Madhu, who was being treated with cruelty which started in the beginning with the demand of dowry but continued later on account of various other reasons."

We have extracted the main part of the judgment only to show that how the High Court has acted merely on suspicion. We are unable to say as to on what basis the High Court could reach the conclusion that on 11th March, 1982 itself both A 1 and A 2 committed the murder of the deceased and left the dead body. Such a conclusion should be based on acceptable evidence. There is absolutely no material that the deceased was murdered on 11th March, 1982 itself. The medical evidence simply states that the death could have taken place 4 to 8 days prior to post-mortem. D.W. 2, the daughter is categorical that her mother, the deceased, was alive till 16th March, 1982 and that being the nature of the evidence On record, we are unable to appreciate the above conclusion of the High Court purely based on suspicion and surmises. Further, the learned Judges of the High Court have mentioned in the above passage that both the accused conspired to commit the murder of deceased and having conspired they themselves committed the murder. In our view there is no evidence worth mentioning to establish these offences.

Naturally in a case of this nature, the question that arises from a layman's point of view is then who else could have committed the murder in the house itself? Perhaps if A 1 and A 2 were present in the house on the day of homicide then the situation would have been different and both of them would have been under an obligation to give an explanation and the absence of a plausible explanation or giving a false explanation could have been very much incriminating against them. The same coupled with other circumstances would have perhaps brought home the guilt to the accused. But the circumstances

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are different now. A 1 and A 2 were away from the house. The medical evidence does not at all support that the murder, assuming it to be one, could have taken place on 11th March itself as conjectured by, the High Court. If the murder has taken place some time after 11th March, then A 1 and A 2 cannot directly be connected with the murder. That being so unless conspiracy as such is established, they cannot be held liable. Then the other inmates in the house are only the mother-in-law and the children of the deceased. None of them was suspected and at any rate no one of them was charge-sheeted or tried. Therefore the question of any one of them being held responsible for the death does not arise. No doubt a grave suspicion does arise namely that some of the inmates of the house must have been responsible and an accusing finger can be pointed against A 1 and A 2 but from 11th March onward they were not in the house. D.W. 2's evidence clinches the issue that the death must have been taken place only after 16th and before 18th March. It is in this situation the High Court surmised on mere suspicion that A 1 and A 2 conspired and also committed the murder on 11.3.82 itself. If the murder has been committed on 11th March itself the body would have been highly decomposed by 18th March, 1982 and would have been emitting very bad smell. One cannot imagine that the other remaining inmates of the house would have simply and silently suffered in the

house without informing anybody. On the other hand D.W. 2's evidence is different and she categorically stated that the deceased was alive upto 16th March. That appears to be natural and there is no reason whatsoever to doubt the same.

As indicated supra we are inclined. to agree with the Sessions 'Court that the medical evidence does not establish the death to be one of homicidal. At any rate there is a grave doubt in this regard. The evidence on record clearly shows that the deceased was not mentally sound. The fact that she was not coming out of the room and used the same for answering the calls of nature also would snow that there was something abnormal about her and she confined her movements to the four corners of the room. 15th March, 1982 was the last day when D.W. 2 served food to the deceased. Thereafter she did not go inside the room and on 18th March, 1982 the dead body was discovered. The evidence of P.W. 2, the Doctor, also shows that no brain injury could be traced and he also did not find any injury on the bones of wind pipe. In view of these and other admissions the trial court rightly felt that there was a reasonable doubt about the cause of death also and accordingly acquitted the accused.

From the above discussion the following important points

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emerge; It is an undisputed case that the second accused was not present in the scene house where the occurrence took place from 11th to 20th March, 1982 and that the first accused was at Jodhpur in his daughter's house from 14.3.82 to 17.3.82 and returned to Jaipur on 18.3.82. Therefore they were not present in the house when the deceased died- The Medical Officer, P.W. 2 could not say definitely as to whether the death has occurred before four days of his examination and there is absolutely no evidence either circumstantial or direct to hold that the death took place on 11.3.82 itself as found by the High Court. The evidence of D.W. 2 who is none other than the daughter of the deceased and was very much in the house throughout categorically stated that her mother was alive on 15th March also. Apart from D.W. 2 the only other inmate of the house during the crucial period was the mother-in-law of the deceased who was not even charge-sheeted. The letter Ex. P-15 written by the first accused does not in any manner incriminate them and the High Court has grossly erred in holding that A 1 and A 2 entered into conspiracy merely on the basis of conjectures and surmises drawn from the letter. P.Ws 4, 9 and 10 have not supported the prosecution case and the remaining evidence does not in any manner implicate A 1 and A 2 and the other remaining inmate of the house, the mother-in-law of the deceased, was not even suspected. Therefore having given our anxious and careful consideration to the facts and circumstances of the case we feel that the prosecution has miserably failed to bring home the guilt of the appellants and consequently we are inclined to allow the appeal.

The accused were tried for offences punishable under Sections 302 read with Section 34, 201 and 120-B I, P.C. only and in our view the trial court rightly held that none of these charges were proved against them.

The learned counsel for the respondent State of Rajasthan, however, submitted that the accused would at least be liable of having committed other offences. It may be noted that the question whether they would be liable under Section 498-A or 304-B does not arise for consideration inasmuch as these provisions were not on the statute on the day of occurrence. However, A 1 was at least under an obligation to give information about the death of the deceased since the same was unnatural. Assuming that the prosecution has not

positively proved that the death was homicidal yet from the medical evidence it is clear that it was not a natural death and consequently the death should atleast be noted as one of suicide. Even in the case of suicide an offence of abetment punishable under Section 306 is inherent. There-

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fore, even in the case of a suicide there is an obligation on the person, who knows or has reason to believe that such a suicidal death has occurred, to give information. In *Kalidas Achamma v. The State of A.P., S.H.O. Karimnagar. I Town P.S., [1987] 2 ALT 937* it was observed as under:

"In the case of every suicide abetment is inherent. Whether ultimately it is proved or not, it is a different aspect. Abetment of suicide is an offence punishable under Section 306 I.P.C. and therefore whenever a case of suicide is there, the body cannot be disposed of without informing the Police and further as provided under Section 174 Cr. P.C. the Police have to hold an inquest Since it is an unnatural death. ' ' "

In the instant case A 1, who reached his house on 18.3.82 knowing fully well that the deceased had already died, informed P.W. 8 that the deceased was in a serious condition. Likewise he informed P.W. 12 on telephone without disclosing that the deceased was already dead. However, when P.W. 6, the brother of the deceased, came to the house where the dead body was lying, A 1 told him that the body would be cremated. To the same effect is the evidence of P.W. 13. P.W. 6, the brother of the deceased, on his own went and gave a report to the police. It can thus be seen that A 1 intentionally omitted to give the information in respect of the death of the deceased which he was legally bound to give. Section 202 I.P.C. is in the following terms:

"202. Intentional omission to give information of offence by person bound to inform--Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

This Section punishes the illegal omission of those who under law are bound to give information in respect of an offence which he is legally bound to give particularly being the head of the family. Under this provision it is necessary for the prosecution to prove (1) that the accused had knowledge or reason to believe that some offence had been committed (2) that the accused had intentionally omitted to give information respecting that offence and (3) that the accused was legally bound to give that information. *Shri R.K. Jain*, however, relied

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on a judgment of this Court in *Harishchandrasing Sajjansinh Rathod and Another v. State of Gujarat, [1979] 4 SCC 502* and contended that the word "Whoever" occurring in the opening part of the Section refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence. In that case the accused were tried for offences punishable under Sections 331 and 304 read with Section 34 I.P.C. in respect of the death of the deceased and were acquitted. On appeal by the State the High Court, however, convicted them under Section 202 I.P.C. A Bench of this Court while reversing the

order of High Court observed thus:

"We have gone through the entire evidence bearing on the aforesaid offence under Section 202 but have not been able to discern anything therein which may go to establish the aforesaid ingredients of the offence under Section 202 of the Penal Code. The offence in respect of which the appellants were indicted viz. having intentionally omitted to give information respecting an offence which he is legally bound to give not having been established, the appellants could not have been convicted under Section 202 of the Penal Code. It is well settled that in a prosecution under Section 202 of the Penal Code, it is necessary for the prosecution to establish the main offence before making a person liable under this section. The offence under Section 304 (Part II) and the one under Section 33.1 of the Penal Code not having been established on account of several infirmities is difficult to sustain the conviction of the appellants under Section 202 of the Penal Code. The High Court has also missed to notice that the word 'whoever' occurring at the opening part of Section 202 of the Penal Code refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence. This is so because there is no law which casts duty on a criminal to give information which would incriminate himself. That apart the aforementioned ingredients of the offence under Section 202 of the Penal Code do not appear to have been made out against the prosecution. There is not an iota of evidence to show that the appellants knew or had reason to believe that the aforesaid main offences had been committed."

(emphasis supplied)

From these observations it is clear that there was no evidence to show

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that the accused therein knew or had reason to believe that the said offences have been committed and on the other hand they were made principal offenders. In such a situation the ingredients of Section 202 can not be said to have been made out. It is in this context that the meaning of the word "whoever" has been considered. But in the instant case A 1 returned to his house where the dead body was lying on 18.3.82 and the circumstances clearly go to show that he had knowledge that the deceased died of an unnatural death. Therefore he had knowledge or at least had reason to believe that an offence had been committed even if, at that stage; he thought that it was only a suicide. Therefore it was his bounden duty particularly as head of the family to inform the authorities. He omitted to do so. On the other hand, he went about telling that the deceased was still alive and her condition was serious. But when P.W. 6, the brother of the deceased, came to the house and enquired, A 1 told him that the body would be cremated and he intended to do so without informing the authorities. Therefore all the ingredients of Section 202 are made out against him and he clearly committed the offence punishable under this Section at that stage. The fact that he himself was made an accused in other

offences subsequently does not absolve him of his complicity in respect of the offence punishable under Section 202 I.P.C. So far A 2 is concerned, he came to the house only after the investigation commenced. Therefore his-case stands on a different footing. In the result the convictions and sentences awarded against A 1 and A 2 are set aside. A 1, however, is convicted under Section 202 I.P.C. and sentenced to undergo six months' R.I. The appeal is disposed of accordingly.

V.P.R.

Appeal disposed

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JUDIS