

STATE OF U.P.
v.
BAL KISHAN DAS AND ANR.

OCTOBER 29, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

Criminal Law:

Penal Code, 1860: Sections 201, 302 and 34.

Murder—Circumstantial evidence—Murder of victim in her matrimonial home—Trial Court convicted brother-in-law of victim under Ss.302 and 201 IPC and his cousin under S.201 IPC—Father-in-law of victim acquitted—Order of trial court confirmed by High Court—Held: there was no reason to distrust concurrent findings of the courts below that identity of victim was established and that victim died in her matrimonial home—However, Courts below erred in acquitting father-in-law of victim—Role played by father-in-law and brother-in-law not distinguishable for they acted in unison—Hence, acquittal of father-in-law set aside and convicted under S.302/34 IPC and sentenced to imprisonment for life—Conviction of brother-in-law under S.302 IPC (Simpliciter) altered to one under S.302/34 IPC—Conviction of cousin of brother-in-law confirmed—But his substantive sentence of 5 years 'RI reduced to two years' RI considering the fact that offence was committed more than fourteen years back.

The respondents—accused were convicted and sentenced under Sections 302 and 201 of the Indian Penal Code, 1860 while the father-in-law of the deceased was acquitted. The order of the trial court was confirmed by the High Court. Hence this appeal.

According to the prosecution, the deceased was living with her husband in the house of her in-law. The deceased celebrated the festival of 'Holi' in her elder sister's house and returned to her matrimonial home the next day. Sometimes later, the father-in-law of the deceased lodged a report with the police to the effect that the deceased was missing from the house. The deceased was wearing a red printed cotton saree and some glass-bangles of "maroon" colour. Subsequently, the father-in-law of the deceased handed over to the police an application

A along with an 'Inland' letter. The inland letter gave the information that the deceased was in the custody of her abductor and that she would be sent back after payment of Rs. 2. lakhs.

B In the meantime, the dead body of a woman was found in the Railway Station in a gunny bag which was wrapped in a green coloured hold-all. The deceased was wearing a red printed saree and there were some glass bangles of red colour around her left wrist. Photographs of the dead body were taken, a post mortem was held and the doctor, (PW-17), opined that death was due to strangulation. The elder sister of the deceased identified the clothes and the glass bangles as belonging to the deceased. When the enlarged photographs of the deceased were shown to the sister and father of the deceased they identified the same as those of the deceased.

C It was the further case of the prosecution that the brother-in-law of the deceased along with his cousin had loaded a green coloured hold-all in a rickshaw and carried it to the Railway Station. D Subsequently, the father-in-law, brother-in-law and his cousin were arrested and from their house some gunny bags, quite similar to the gunny bag in which the deceased was found, were seized.

E In the appeal before this court, on behalf of the accused persons it was contended that the prosecution had failed to prove the identity of the deceased; that according to the opinion of D.W.4 death of the deceased was not due to strangulation and hence the prosecution failed to prove that the deceased met with a homicidal death.

F Disposing of the appeal, this Court

G HELD : 1. The prosecution sought to establish the identity of the deceased by the identification of the clothes and glass bangles found on her person and also the photographs taken of the dead body. The deceased had on her person a red printed saree and a number of red coloured glass bangles. The elder sister of the deceased had identified the above articles as belonging to the deceased and further stated that the glass bangles had been given to the deceased by her on the occasion of the 'Holi' when she had visited her. She also testified, on being shown the enlarged photographs of the deceased, that those were of her sister. Both the trial Court and the High Court H discussed the evidence of the elder sister in this regard and found the

same trustworthy. This apart, the Courts below noticed that the description of the wearing apparels of the deceased as given by her father-in-law in the missing report tallied with the description of the articles found on the person of the deceased. Having gone through the evidence of the elder sister of the deceased there is no reason whatsoever to disturb the above concurrent findings. [64-B-E]

2. So far as the cause of death of the deceased is concerned the Courts below have given detailed reasons for accepting the opinion of PW-17 in preference to that of DW-4, who opined that the death was not due to strangulation. One of the reasons so given is that DW-4 had expressed his opinion solely on the basis of the report submitted by PW-17 after holding the autopsy and that he had no occasion or opportunity to see and examine the dead body itself. In the instant case the prosecution was required to prove, after having succeeded in establishing the identity of the deceased, that she met with a homicidal death in her matrimonial home. If, therefore, from the circumstances appearing on record the prosecution has been able to conclusively prove that fact, the manner how her such death was brought would not be of any moment. [64-E-F, 65-B]

Piara Singh v. State of Punjab, AIR. (1977) SC 2274, relied on.

3. The ransom letter was a fabricated letter and false reports were lodged with the police to misguide them but it is not possible to hold that only the brother-in-law of the deceased was party thereto. When the ransom letter so prepared/procured was posted with the father-in-law of the deceased as the addressee, and after receipt of the same when it was annexed to a document which he himself signed after getting it typed it must be said that the father-in-law was also a party thereto. For the self-same reason the father-in-law would be also culpable for filing the earlier missing report with the police. When these facts and circumstances are considered in juxta-position with the presence of the father-in-law in the house when the murder took place the only inference that can be drawn is that he was a party to the murder of the deceased and removal of her dead body. Therefore, the cases of the brother-in-law and the father-in-law of the deceased are not distinguishable and they stand on the same footing for they acted in unison. [67-F, 68-AB, 66-B]

4. As regards the cousin of the brother-in-law of the deceased, his conviction under Section 201 IPC has got to be upheld in view of

- A** the unimpeachable evidence of PW-8 and other evidence which indubitably proves that being fully aware that the deceased had been murdered, the actively associated himself in removal of her dead body, obviously to screen the offenders. But considering the facts and circumstances of the case and particularly the fact that since the offence was committed more than fourteen years have elapsed the
- B** substantive sentence of rigorous imprisonment of five years imposed upon him for the above conviction is reduced to rigorous imprisonment for two years. [68-C-E]

- C** 5. The conviction of the cousin of the brother-in-law of the deceased under Section 302 IPC (Simpliciter) will stand altered to one under Section 302/34 IPC but the sentences imposed upon him shall stand confirmed. The acquittal of the father-in-law of the deceased is set aside and he is convicted of the offences under Sections 302/34 and 201/34 and sentenced to suffer imprisonment for life. [68-FG]

- D** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 120 of 1988 Etc.

From the Judgment and Order dated 22.5.87 of the Rajasthan High Court in Crl.A. No.135 of 1983.

- E** Pramod Swarup for A.S. Pundir, Ms. Prerna Swarup and Prashant Choudhary for the Appellant.

R.P. Gupta for the Respondents.

- F** The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. These three appeals have been heard together as they arise out of a common judgment rendered by the Rajasthan High Court disposing of three criminal appeals. Facts relevant for disposal of these appeals are as under.

- G** Rama, (deceased) was the daughter of Shri S.S. Kela (PW 35) and Smt. Vimlawati (PW 33) of Kasganj, District Etah (U.P.). She held a post graduate degree in Hindi literature and was active in games. On May 6, 1981 she was married to Suresh Narain of Saharanpur (U.P.) and since then she was living with her husband in the house of her in-laws at *Mohalla*
- H** Memaran (Khalapur) in Saharanpur.

In the following year (1982) the festival of 'Holi' fell on March 9; and as, according to the custom prevalent in their community Rama could not celebrate the festival in the first year of her marriage in the house of her in-laws, her father came to fetch her. Her in-laws, however did not permit her to go with her father but sent her to the house of her elder sister Smt. Malti Devi (P.W. 30) who was married to one Satish Kumar and was living in a neighbouring *Mohalla*. Rama however came back to her matrimonial home on the following day (March 10, 1982).

In the afternoon of March 14, 1982, Bal Kishan Dass, father-in-law of Rama, lodged a report (Ex. P.31) with the Kotwali (City) Police Station to the effect that she was missing from the house and in spite of their best efforts they were unable to trace her whereabouts. It was reported that Rama had retired for the night as usual but in the morning it was found that the main door of the house was wide open and she was not there. It was also reported that she was a victim of occasional fits for which she was being treated. It was further mentioned that when she went to bed in the previous night she was wearing a red printed cotton saree, a sweater of orange colour, ear-rings, a neck-chain, some glass-bangles of 'maroon' colour, two golden rings on the fingers, silver 'paizeb' on ankles and 'Bichwas' on toes. Along with the report, her photograph (Ex. P.33) was also handed over to the police. Before lodging the report Bal Kishan Dass had sent telegraphic message to Rama's father. Similar messages were also sent to Khangaon in the State of Maharashtra where Suresh Narain, husband of Rama, was supposed to have gone in the night of March 10, 1982 to attend a marriage and other places where Suresh was expected to visit after attending the marriage.

On getting information from Mahesh Narain, elder brother of Suresh, that Rama was missing Malti along with her husband Satish went to the house of Bal Kishan. She however was not satisfied with the explanation given by the mother-in-law of Rama about her disappearance. Returning therefrom she and her husband telephonically contacted Dr. S.S. Rathi (P.W. 12), a professor of Delhi University to whom Rama's another sister Sushma was married. Dr. Rathi was requested to inform Shri Kela at Kasganj also. On the following day (March 15, 1982) Shri Kela, Dr. Rathi and Kanti Chand (PW 34), elder brother of Rama, reached Saharanpur. Since Shri Kela was also not satisfied with the story of mysterious disappearance of Rama as given out by the members of her husband's family he lodged a report with the Saharanpur police station on the same day (Ex. P. 161). Therein he stated that when he last met her she told him that she was being tortured by her in-laws. It was also stated in the report

A that earlier two of the daughters-in-law of Bal Kishan Das had died under mysterious circumstances. Accordingly, Shri Kela asked the Station House Officer to make a proper investigation into the matter in the light of the information given by him.

B On March 16, 1982, Bal Kishan Dass met Shri M.S. Bali, the Addl. Superintendent of Police, Saharanpur and handed over to him an application (Ex. P. 41) along with an 'Inland' letter (Ex. P. 59), which he claimed to have received by post. The inland letter, which was addressed to Bal Kishan Dass by one Ahmed Hasan, gave the information that his son's wife Smt. Rama was in his custody and that she would be sent back only after he was paid two lacs of rupees. He (Bal Kishan) was warned
 C that any report to the police and failure to pay the required ransom at the desired place by March 18, 1982 would cost the life of the kidnapped lady. The alleged abductor of Rama had asked him to enquire of his address from Bharat Steels, Dehradun Chowk, Saharanpur. Shri Bali directed the Kotwali (City) Police Station to take necessary action in the matter.

D Since no action was taken by the Saharanpur police to trace out Rama her relatives decided to approach the higher authorities. Accordingly, Dr. Rathi held talks with his colleague Dr. K.S. Shukla (P.W. 11), Dean of Students Welfare in Delhi University and apprised him of the matter and on March 24, 1982 along with others met the Minister of State for Home
 E Affairs of the Government of India. After getting an assurance from the Minister that he would look into the matter when they were returning from the Parliament House they met some press reporters and gave them the news of Rama's missing.

F In the meantime, on March 17, 1982 at or about 1.00 A.M. when Kali Ram (P.W. 5), a Sanitary Jamadar, along with his men was washing platform No.1 of New Delhi Railway Station he found a green coloured hold-all lying abandoned and unclaimed near a bench in front of the II Class Ladies Waiting Room. When he tried to keep it aside he found it heavy and emitting bad smell. Suspecting some foul-play he sent
 G information to the Police Head Constable Kartar Singh (P.W. 2) of the Railway Police Station who, in his turn, informed Station House Officer (S.H.O.) Ram Swaroop Yadav (P.W. 38). On getting the information Shri Yadav rushed to the site of the hold-all along with other police personnel.

H On opening the hold-all he first found a large gunny bag (Art. 4) tied with a rope (Art. 15) beneath it another small gunny bag (Art. 3) and

then a 'gadda' (Art. 2). When the large gunny bag was opened a decomposed and swollen corpse of a woman aged about 25/26 years came out. On inspection Shri Yadav found that the deceased had a red printed saree (Art. 5), a yellow petticoat (Art. 7), a woolen sweater of 'BADAMI' colour (Art. 6) and a yellow cotton blouse under the woolen blouse (Art. 8) on her person. Besides there were some glass bangles of red colour (Art. 12) around her left wrist and a few broken pieces of such bangles (Art. 13). A B

Shri Yadav then recorded the statement of Kali Ram Jamadar (Ex. 34) and forwarded the same to the police station for registering a case. Kartar Singh H.C. registered Crime No. 87/82 under Section 302 IPC vide F.I.R. Ex. P. 3 at 3.26 A.M. Shri Yadav got photographs of the dead body taken, held inquest upon it and then sent it for post mortem examination. He seized the hold-all, the gunny bags, the *gadda* and the broken bangles and sealed them. C

Dr. L.T. Ramani (PW. 17) held post mortem examination on the same day and found that the deceased was aged about 25 years, medium complexioned (on fairer side), with a well built body of a height of 5'-2". Besides the clothes and the bangles mentioned above, he found a 'tilli' in her left nostril. The body was decomposed and fluid was oozing out of the nostrils. Her eye-balls were decomposed, nails were blue and falling out and the tongue was protruding in between the teeth. He removed the coir rope which was encircling the neck and found a deep constricting groove, horizontally placed on the middle of the neck over the thyroid cartilage all around the neck. The width of the ligature mark varied from 1/2" to 3/4" at places. On internal examination of the dead body Dr. Ramani found that the scalp tissues were normal, skull bones were intact and brain was congested. On dissection of the neck tissues he found effusion of blood there, hyoid bone intact and trachea contained fluid and was congested. The ribs were intact. Lungs showed signs of decomposition and the heart was decomposed and the chambers were empty. Dr. Ramani opined that the ligature mark was caused by the rope present around the neck and was ante-mortem. He further opined that the ligature was sufficient to cause death in ordinary course of nature and that the deceased had died due to asphyxia resulting from strangulation. As the dead body had been reported to have been found in a hold-all Dr. Ramani opined that her death had taken place two to three days before. Later, on June 4, 1982, when Shri Yadav, the Investigating Officer, further enquired of him whether the time between her death and the autopsy could be more or less than what he had D E F G H

A mentioned in his report, Dr. Ramani opined that it could be 4 to 5 days but in no case it could be later than the time he had mentioned earlier. Dr. Ramani preserved the viscera, scalp and pubic hair and handed over the same to the constable in sealed condition. The clothes and the glass bangles were also handed over to the constable, but not in sealed condition, as they were required for identification purposes. However, the 'tilli' was removed from nostrils of the deceased. On chemical examination of the viscera, Dr. K.S. Chabra (P.W. 25), Senior Scientific Officer cum Assistant Chemical Examiner of the Central Forensic Science Laboratory, New Delhi found that it was positive for methyl alcohol.

C After the post mortem examination the dead body was kept in the mortuary for identification and a Gazette notification in that behalf was also published. Besides, a pamphlet entitled 'Hue and Cry' (Ex. P. 172), with the photograph of the dead body and necessary particulars and details of her clothes, was published and circulated. Wireless messages were also sent to the Police Commissioner and S.Ps. all over the country as also to all the police stations in Delhi. Letters to the press and 'missing persons squad' were sent for getting clues for the identification of the dead body. Since the dead body was not identified within the next four days its last rites were performed by a Sewa Samiti.

E On March 25, 1982, Shri S.R. Yadav, the Investigating Officer, came across a news captioned 'Vain search for Rama' in the Hindustan Times (English) in its issue of the above date (Ex. P. 43). From the news item he learnt that a deputation of the Delhi University Teachers had met the Minister of State for Home Affairs in connection with the disappearance of a lady called Rama who was reported to be missing since March 13, 1982. Since the names of Dr. Rathi (P.W. 12) and Dr. Shukla (P.W. 11), besides others, were mentioned as the members of the deputation, Shri Yadav contacted them. Dr. Rathi and his wife Smt. Sushma could not however identify the deceased either from the photograph or the clothes and bangles but they told Shri Yadav that Rama's elder sister, Smt. Maiti Devi who was also living in Saharanpur might possibly be in a position to identify. Accordingly, Shri Yadav requested Dr. Rathi and his wife to ask Smt. Malti Devi to come to Delhi.

H On the following day Smt. Malti Devi and her father Shri Kela (P.W. 35) reached the New Delhi Railway Police Station along with Dr. Rathi and Dr. Shukla. When the photographs of the deceased were shown to them they could not identify but on seeing the clothes and the glass

bangles of the deceased, Smt. Malti Devi identified them as belonging to Rama. The clothes and bangles having been identified by Smt. Malti an identification memo (Ex. P. 44) was prepared by Shri Yadav and the clothes and glass bangles which had so far been kept open for identification were duly sealed. Later on June 10, 1982 when the enlarged photographs of the dead body were shown to Smt. Malti and her father they identified the same as those of Rama.

The identity of the dead body having been established, Shri Yadav went to Saharanpur. There he contacted Bal Kishan Dass and Mahesh Narain and brought them to the New Delhi Railway Police Station on March 29, 1982 to identify the belongings of Rama. At the police *Malkhana*, when they were shown the clothes of the deceased, they it is alleged, became nervous and began to look at each other. Shri Yadav then found reasonable grounds to suspect them in the commission of the murder of Rama and, therefore, arrested them.

After their arrest both of them are alleged to have made certain incriminating disclosures. Balkishandass is alleged to have made a statement leading to the recovery of a golden chain (Art. 20), a pair of golden 'churies' (Arts. 21 and 22), a pair of gold ear-rings (Arts. 23 and 24), a gold ring (Art. 25) a pair of silver bichwas (Arts. 26 and 27) and a pair of silver 'Paizeb' (Arts. 28 and 29) from an almirah in his house at Saharanpur which were seized and sealed. The ornaments were later on identified as belonging to the deceased. In course of further search of the house, 7 large gunny bags were also recovered. Later Shri S.R. Singh (PW 22) Senior Scientific Officer Cum-Asstt. Chemical Examiner to the Government of India and head of the Physics Department Forensic Science Laboratory, New Delhi on his examination and comparison of these gunny bags with the one in which the dead body of Rama was found, opined that the bags were quite similar to each other in their 'physical measurements' and other general/accidental printing characteristics (Ext. P. 99).

On interrogation of the above two accused persons, namely, Bal Kishan Dass and Mahesh Narain, it appeared to the Investigating Officer that Suresh Narain and Ashok Kumar, a cousin of Suresh Narain were also involved in the murder of Rama. Accordingly he also arrested them and continued with the investigation in the light of further materials disclosed in course thereof. On completion of investigation he filed chargesheet against the aforesaid four accused persons before the Chief Judicial Magistrate, Saharanpur who committed the case to the Court of Session, Saharanpur for trial. Before, however, the Sessions Judge, Saharanpur

A could commence the trial, the case was transferred by an order of this Court, to the Court of the Sessions Judge Bharatpur in the State of Rajasthan for trial.

B At the commencement of the trial a charge under Section 120-B read with Sections 302 and 201 IPC was framed against three of the accused persons, namely, Bal Kishan Dass, Mahesh Narain and Suresh Narain. Against Bal Kishan and Mahesh Narain additional charges under Sections 302 and 201 IPC and against Ashok Kumar only a charge under Section 201 IPC was framed.

C In the absence of any eye-witness to bring home the above charges the prosecution rested its case on circumstantial evidence; and for that purpose examined 42 witnesses and exhibited 195 documents. The circumstances which the prosecution relied upon to prove its case are as under:

D (i) Rama was seen alive in her matrimonial home on March 12, 1982 by Smt. Balloo (P.W. 25) who was then working as a maid servant there;

E (ii) However, on the following morning (on March 13) Balloo did not see her in the house; and in the same afternoon when Smt Shobha (P. W. 41), a school friend of Rekha, daughter of Bal Kishan Das, went to meet her she could not also find her.

F (iii) In that night, at or about 9.30 P.M. Mahesh Narain was seen by Rasul Ahmed (P.W. 9), a tea shop owner, to go to the house of Ashok Kumar.

(iv) At or about 11 P.M. in the same night Mahesh Narain had hired the rickshaw of Ishab Singh (P.W. 8) and brought it to their house;

G (v) A little later Mahesh Narain and Ashok Kumar had loaded a hold-all (Art. 1) in that rickshaw and carried it to the Saharanpur Railway Station;

H (vi) Some two hours later the above two accused persons were seen at that Railway Station with the hold-all by Ghanshyam Dass Maheshwari (P.W.10);

(vii) On the following afternoon (March 14, 1982) the same hold-all was seen by Gursewak Singh (P.W. 26) an Electrical Fitter of the Amritsar Railway Station, on platform No.3 of that station;

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(viii) In the same afternoon Bal Kishan Dass had gone to Kotwali Police Station, Saharanpur along with Mahesh Narain and lodged a false report that Rama was missing (Ex. P.31);

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(ix) On March 16, 1982 Bal Kishan Dass and Mahesh Narain had handed over an application (Ex. P/41) along with a ransom letter (Ex. P/59), which was a fabricated document, to the Addl. Superintendent of Police, Saharanpur;

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(x) The application (Ex. P/41), was typed by Anil Kumar (P.W. 13) on his typewriter at the behest of Mahesh Narain and Bal Kishan Dass and signed by the latter; the ransom letter (Ex. P/59) was also typed on the same typewriter after it (the typewriter) was procured from Anil Kumar by Mahesh Narain and Ashok Kumar on the pretext of getting some confidential matters typed.

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(xi) In the night of March 17, 1982 a dead body of a woman was recovered from the hold-all (Art. 1) when it was lying on platform No. 1 of New Delhi Railway Station;

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(xii) The dead body was that of Rama, as testified by Malti (P.W. 30) and her father Shri Kela (P.W. 35).

(xiii) Rama met with her death owing to strangulation;

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(xiv) Mahesh Narain and Bal Kishan Dass had the opportunity to commit the murder;

(xv) Bal Kishan Dass, Mahesh Narain and Suresh Narain had hatched a conspiracy in the evening of March 10, 1982 to commit the murder of Rama;

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(xvi) Bal Kishan Dass and his two sons had a strong motive to commit the murder as the parents of Rama failed to meet their dowry demands.

(xvii) Some of the ornaments that Rama was wearing immediately

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A before her death were recovered from the house of Bal Kishan Dass pursuant to his statement;

(xviii) Seven gunny bags, similar to the one in which the death body of Rama was found, were recovered from the house of the Bal Kishan Dass; and

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(xix) Bal Kishan Dass made an extra-judicial confession before Kamta Prasad (P.W. 31).

C The common defence of the four accused persons, who pleaded not guilty to the charges framed against them, was that they had been falsely implicated. They disputed the identity of the deceased as Rama as also the claim of the prosecution that the deceased died due to strangulation. In disputing the cause of death they examined Dr. P.P. Jangid (D.W. 4), a medical jurist. In his examination under Section 313 Cr. P.C. Bal Kishan Dass stated that he was a man of principles and did not believe in either taking or giving dowry in marriages. He asserted that he had neither demanded nor received any dowry from Shri Kela and that his relations with him had throughout been cordial. He admitted that on the occasion of 'Holi' Rama had gone to stay with her elder sister Malti for the night but disputed her (Malti's) claim that she had visited his house on March 12, 1982. He added that his was a well-to-do family and that his eldest son Ramesh Narain was the Secretary of the Maheshwari Samaj, Saharanpur whereas Munshi Lal, father-in-law of Malti, was the Adhyaksh of that Samaj. Since Satish Chand, son of Munshi Lal and husband of Malti, was a man of bad character and was convicted and sentenced for immoral trafficking he (Bal Kishan) had asked Munshi Lal to step down from the office of the Adhyaksh. This had enraged Munshi Lal and his family and it was he who had left no stone unturned in getting him and the members of his family falsely implicated in the case with help of Shri Kela and his son Santi Chandra. He asserted that Rama had left the house of her own during the night between March 13 and 14, 1982. He further stated that on coming to know of Rama's missing from the house he had sent Mahesh Narain to enquire of Rama from Malti and had sent a telegraphic message to Shri Kela at Kasganj. As Suresh Narain had gone to Khamgaon to attend the marriage of his niece there, he sent telegraphic message there for his early return. He further stated that he had lodged the report (Ex. P. 31) with the local police and on getting the ransom letter (Ex. P/59) on March 16, 1982 by post, he had handed over the same along with his application (Ex. P/41) to the Saharanpur Police. He denied to have ever conspired with his sons to murder Rama and to have made any extra judicial

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confession before Kamta Prasad (P.W. 21). He asserted that his two sons (the two accused) and daughter Rekha were taken by the Delhi Railway Police from his house in the night of March 26, 1982 and in Delhi he came to know that accused Ashok Kumar and Smt. Balloo (P.W. 25) were also brought likewise. He denied to have made any statement to the police leading to the alleged recovery of the ornaments (Ex. 20 to 29) from his house. He asserted that he himself was a money lender by profession and advanced loans to needy persons against pledge of ornaments and, therefore had sufficient knowledge about the purity of gold and from such knowledge he could say that the above ornaments, stated to be of gold, were actually not so. In support of his assertion he examined two goldsmiths, namely, Amar Singh (D.W. 1) and Om Prakash (D.W. 5).

In their examination under Section 313 Cr. P.C. Suresh Narain and Mahesh Narain also made similar statements. Suresh Narain stated that he had left Saharanpur for Khamgaon in the night of March 10, 1982 and on getting the telegram from his father he returned on March 18, 1982. He asserted that his wife had not been killed and he was still in search of her. Mahesh Narain stated that he was an M.Sc. in Agriculture and was employed as a Quality Inspector with Food Corporation of India in its branch office at Saharanpur. He further stated that he had gone to Kasganj on March 10, 1982 and had returned therefrom along with the brother of his wife on the following day. He examined his brother-in-law Kaushal Baboo Rathi (D.W. 2) in support of this version. It was further stated by him that on March 11, 1982 the *Sagai* ceremony of Rekha with the son of Seth Krishna Kumar (D.W. 3) was to be performed at his house but that had been postponed to March 21, 1982. According to him the question of his entering into a criminal conspiracy to murder Rama on the eve of such an auspicious occasion could not have arisen. He pointed out that he himself was married in the month of February 1982. He also denied to have taken the hold-all (Art. 1) to the Saharanpur Railway Station. Ashok Kumar denied that he was ever called by Rasul Ahmad (P.W. 9) from his house or had gone to the Saharanpur Railway Station with the hold-all in the rickshaw of Ishab Singh and had talks with Ghanshyam. Ghanshyam's version that he had gone to the Railway Station to send off his cousin, who was allegedly going to Palwal, was also disputed by him.

Apart from examining six witnesses in support of their defence the accused persons exhibited 77 documents.

From the judgment of the trial Judge which runs through 170 pages, we find that he detailed and discussed the entire evidence adduced by the

A parties keeping in view the cases of the respective parties before answering the question whether all or any of the circumstances enumerated above stood established.

B According to the trial Judge, while the prosecution failed to prove circumstances under item Nos.(vi), (vii), (xv), (xvi), (xvii), (xviii) and (xix), it succeeded in conclusively proving all the other circumstances. From the circumstances so proved the trial Judge concluded that the murder of Rama had definitely been committed in the house of Bal Kishan Dass and subsequently her dead body had been disposed of in the manner alleged by the prosecution. With the above conclusion the trial Judge proceeded to consider the alleged involvement of the four accused persons in the above offences. In dealing first with Bal Kishan Dass, the trial Judge observed that consequent upon the failure of the prosecution to prove the motive as also any conspiracy behind the commission of the above offences, there were only two incriminating circumstances which stood proved against Bal Kishan Dass: namely, that he lodged a false report (Ex. P. 31) and later on produced a fabricated ransom letter (Ex. P. 59) before the police. According to the trial Judge, it was not unlikely that being the head of the family he thought it necessary to save its honour and reputation which was likely to be affected by the murder of Rama and probably it was only with that object in view that he made the report and produced the ransom letter before the police. That apart, the learned Judge observed, the report (Ex. P. 31) was written by Mahesh Narain and not Bal Kishan Dass. Accordingly, the learned Judge felt that Bal Kishan Dass was entitled to the benefit of doubt. So far as Suresh Narain was concerned the trial Judge held that since the prosecution signally failed to prove the offence of criminal conspiracy and since he was admittedly not present in Saharanpur at the material time he was entitled to acquittal. As regards Ashok Kumar the Sessions Judge held that the charge under Section 201 IPC stood conclusively proved against him as the prosecution was able to establish beyond all reasonable doubts that he actively helped Mahesh Narain in causing the dead body of Rama, which was the evidence of the commission of her murder, to disappear with the intention of screening her murderer from legal punishment. Lastly, he dealt with the role of Mahesh Narain and held that both the charges under Section 302 and 201 IPC stood fully established against him as he had the best opportunity to commit the murder which took place in their house and he was instrumental in removing her dead body as also in giving false report to the police and fabricating the ransom letter. With the above findings, the trial Judge convicted and sentenced Mahesh Narain under sections 302 and 201 IPC and Ashok Kumar under Section 201 IPC, while acquitting the other two accused.

Against their conviction and sentence Mahesh Narain and Ashok Kumar filed two separate appeals in the High Court; and the State, in its turn, filed an appeal against the acquittal of Bal Kishan Dass and Suresh. The High Court concurred with all the findings of the trial Judge regarding the incriminating circumstances alleged against the accused except so far as it related to the recovery of gunny bags similar to the gunny bag in which the dead body of Rama was found from the house of Bal Kishan Dass. The High Court also concurred with the view expressed by the trial Judge as regards the alleged complicity of the accused persons in the offences committed. Resultantly the High Court dismissed all the three appeals. The above judgment of the High Court is under challenge in these three appeals, two of which have been filed by Ashok Kumar (Criminal Appeal No. 82 of 1988) and Mahesh Narain (Criminal Appeal No. 221 of 1988) and the other (Criminal Appeal No. 120/88) by the State of U.P. dismissing their appeal against the acquittal of Bal Kishan Dass and Suresh.

We have heard the learned counsel appearing for the parties at length and carefully perused the voluminous evidence, oral and documentary, adduced during trial. From the record we find that in the learned Courts below the defence did not challenge the prosecution case so far as it sought to prove (a) that Rama was in her matrimonial home on March 12, 1982; (b) that both Bal Kishan Dass and Mahesh Narain were also there on March 12 and 13, 1982; (c) that on March 14, 1982 both of them went to Kotwali Police Station, Saharanpur and lodged the missing report (Ex. P. 31); (d) that on March 16, 1982 they handed over the application (Ex. P. 41) along with the ransom letter (Ex. P. 59) to the Additional Superintendent of Police, Saharanpur; and (e) that on March 17, 1982 the dead body of woman was found inside a hold-all which was lying on platform No.1 of New Delhi Railway Station. Mr. Gupta, the learned counsel appearing for the accused persons in these appeals also did not dispute the findings recorded by the learned Courts below in that behalf though he refuted the claim of Malti that she had met Rama on March 12, 1982. Mr. Gupta, however, strongly assailed their other findings particularly those relating to the identity of the deceased and the cause of her death, and reiterated the arguments canvassed on behalf of the accused persons in the Courts below. He asserted that having regard to the facts that the indictment against the accused persons pivoted on the identification of the deceased as Rama and that the prosecution had signally failed to prove such identity, its entire case must fail. He next contended that even if it was assumed that prosecution established the identity still its case would fail as it was unsuccessful in proving that Rama met with a homicidal death.

A While there cannot be any quarrel with the proposition that on the prosecutions failure to prove either of the above facts its entire case would fail, we are unable to accept the contention of Mr. Gupta that those facts have not been established in the instant case. As noticed earlier the prosecution sought to establish the identity of the deceased by the identification of the clothes and glass bangles

B found on her person and also the photographs taken of the dead body. From the evidence of Shri Yadav (P.W. 38) and the inquest report he prepared (Ex. P. 162 and 162A) it is found that the deceased had on her person a red printed sari, woolen sweater and a number of red coloured glass bangles. Smt. Malti (P.W. 30) had identified the above articles as belonging to Rama and further stated that the glass bangles

C had been given to Rama by her on the occasion of the 'Holi' when she had visited her. She also testified, on being shown the enlarged photographs of the deceased, that those were of her sister. Both the trial Court and the High Court discussed the evidence of Malti in this regard and found the same trustworthy. This apart, the Courts below noticed that the description of the wearing apparels of Rama as given by Bal Kishan Dass in the missing

D report (Ext. P. 31) tallied with the description of the articles found on the person of the deceased. From the judgments we further find that all the comments that were made on behalf of the defence against acceptance of the evidence of identification have been adequately dealt with and rejection. Having gone through the evidence of Malti we do not see any reason whatsoever to disturb the above concurrent findings. So far as the cause of

E death of Rama is concerned the Courts below have also given detailed reasons for accepting the opinion of Dr. Ramani (PW 17) in preference to that of Dr. Jangid (D.W. 4), who opined that the death was not due to strangulation. One of the reasons so given is that Dr. Jangid had expressed his opinion solely on the basis of the report submitted by Dr. Ramani after holding the autopsy and that he had no occasion or opportunity to see and

F examine the dead body itself; and in fortification thereof the Courts relied upon the following passage from the judgment of this Court in *Piara Singh v. State of Punjab*, AIR (1977) SC 2274:

G "Apart from this in the instanc case it appears that Dr. Jitendra Singh had the initial advantage of examining the deceased and holding his post mortem and observing the nature of the injuries on the body of the deceased. His opinion is, therefore, based on first hand knowledge and would be in any event preferable to Doctor Paramjeet Singh who did not have the advantage of seeing the deceased or the injuries on his body but deposed

H purely on the basis of the description of the injuries given by

Dr. Jitendra Singh. For all these reasons, therefore, we would prefer the evidence of Dr. Jitendra Singh to the evidence of Dr. Paramjeet Singh.” A

In the instant case the prosecution was required to prove, after having succeeded in establishing the identity of the deceased as Rama, that she met with a homicidal death in her matrimonial home. If, therefore, from the circumstances appearing on record the prosecution has been able to conclusively prove that fact, the manner how her such death was brought about would not be of any moment. Judged in that perspective, in our considered view, the findings recorded by the learned Courts below in respect of the circumstances under item Nos. (iv) and (v) detailed earlier clinch the issue in favour of the prosecution, sans the testimony of Dr. Ramani. To prove the above circumstances the prosecution examined Ishab Singh (P.W. 8) a rickshaw puller, who testified that his rickshaw was hired by accused Mahesh Narain in the night of March 13, 1982 and in that rickshaw he carried a hold-all from their house to Saharanpur Railway Station. Both the Courts have found his evidence trustworthy and after careful perusal of his evidence we also do not see any reason to differ with the finding so recorded. Incidentally it may be mentioned that the trial Judge has observed that he (P.W. 8) had impressed him (the Judge) very much by his straight forward and unhesitant answers to the questions put to him in examination—in—chief and cross-examination. When his evidence is read in the context of the fact that a few days later (on 17th March) dead body of Rama was recovered from inside a similar hold-all (irrespective of the question whether its identity stood established or not) the only reasonable conclusion that can be drawn therefrom is that she met with her death in the house of her in-laws. As it is nobody’s case that such death was accidental or suicidal—indeed, it was not even suggested by the defence that it was so—the only corollary that follows from the proof of the above two circumstances and the manner in which her dead body was recovered is that her death was homicidal. B C D E F

Now that we have found that Rama was killed in the house of Bal Kishan Dass and her dead body was removed therefrom we have to ascertain the role of the accused persons, if any, in these crimes. As stated earlier except Ashok Kumar, the other accused were of the same household. Since, admittedly, Suresh Narain was not in Saharanpur on March 12 and 13, 1982 and the charge of conspiracy has failed his acquittal has got to be upheld. G

That brings us to the case of the other two members of the household, H

A namely, Mahesh Narain and Bal Kishan Dass. In distinguishing the case of Bal Kishan Dass from that of Mahesh Narain, the learned Courts below observed that though both of them were party to the filing of false reports and a fabricated ransom letter with the police to mislead them, the former did so only to save the honour and reputation of the family. Besides, the Courts noticed that the missing report (Ext. P. 31) was written by Mahesh
 B Narain and the ransom letter was procured/prepared by him. Having given our anxious consideration to this aspect of the matter we are unable to hold that their cases are distinguishable; and in our opinion, they stand on the same footing for they acted in unison.

C It is not in dispute that Bal Kishan Dass and Mahesh Narain were in their house in the fateful nights. It is also not in dispute that the missing report (Ext. P. 31) though prepared by Mahesh Narain, was signed by Bal Kishan Dass and he handed over it to the police on March 14, 1982. Undisputedly again, the application (Ext. P. 41) was typed by Anil Kumar (P.W. 13) at the instance of Bal Kishan Dass and was signed and handed over to the police by him on March 16, 1982. Since it stands established
 D that before the missing report was lodged with the police, Rama had met with her death in his house, it necessarily means that both the reports that were lodged with the police (Ext. P. 31 and P. 41) were false and prepared to mislead the police. Now to ascertain whether the ransom letter (Ext. P. 59) that was annexed to the second report (Ext. P. 41) was also fabricated at the instance of Bal Kishan Dass it will be appropriate to first refer to the
 E same. The transliterated version of the letter, which is in Hindi and was addressed to Bal Kishan Dass reads as under:

“Mohaday,

F Aap ke ladke ki dharam patni Smt. Rama hamara pass surakshit hai, jise hamne 13.3.82 ki ratri me prapt kiya hai. Aap use prapt karne ke liye do lakh rupees lekar 18.3.82 tak Dahradun Chowk par Bharat Steel se hamara pata malum karke prapt ker le, anytha usko maut ka ghat utar diya jayega. Iski suchna kisi bhi police eityadi ko dene ki avaskta nahi hai, yadi police ko suchit kiya to
 G hum use jan se turant mar denge. 18.3.82 ko samay ratri 7 baje.

Aapka
 Ahmed Hussain
 through Bharat
 Steel, Dehradun

H

Chowk,
Saharanpur"

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In commenting upon the above quoted letter the High Court noticed that in the first line of the original the words 'Smt. Rama' has been written above the line and mark has been made between the words 'Dharampatni' and 'Hamare' and then 'Smt. Rama' has been inserted which indicated that the writer was particular about writing the name of Rama even though it was not typed in the main line. The High Court went on to say that the letter used very respectable words and Rama has been referred to as 'dharampatni' of his son and 'Smt.' has been prefixed to her name. Bal Kishan Dass has been addressed as 'aap' and in the end also the writer has written 'aapka'. According to the High Court a kidnapper would not use such respectable words nor make a polite request to pay ransom. Then again, the High Court observed, while demanding ransom the kidnapper would not write the time when the person was kidnapped but would fix the time and place where the ransom money is to be paid. The High Court also noticed that in that letter the time for payment has been added in the end which appeared to it to be an after thought. The High Court noticed that in the letter emphasis is not on the payment of money or the time for its payment but on the date and time when Rama was kidnapped and who Rama was. The High Court observed that a letter claiming ransom would have been short and to the point rather than containing irrelevant details. It is on the basis of the contents of the letter and the evidence of Anil Kumar (P.W.13) who testified that apart from getting the application (Ex. P. 41) typed by him Ashok Kumar and Mahesh Narain had borrowed his type machine for getting some confidential papers typed, the High Court agreed with the finding of the trial Judge that the ransom letter was prepared by Mahesh Narain for misguiding the police. On going through the ransom letter and the evidence of Anil Kumar we are in complete agreement with the Courts below that the ransosm letter was a fabricated letter and false reports were lodged with the police to misguide them but we are unable to hold that only Mahesh Narain was party thereto.

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The ransom letter was an annexure to the report/application (Ext. P. 41) that Bal Kishan Dass signed and presented before the Addl. Superintendent of police. In his examination under Section 313 Cr. P.C. when the trial Court brought to his notice that it had come in the evidence that on March 16, 1982 he got Ex. P. 41 type written by Anil Kumar he admitted that he had done so. Unfortunately, however, while dealing with the case of Bal Kishan Dass the learned Courts below did not at all take into consideration the application (Ext. P. 41) and proceeded only on the

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A basis that the earlier report Ex. P. 31 was written by Mahesh Narain and he was only responsible in procuring the false ransom letter. When the ransom letter so prepared/ procured was posted with him (Bal Kishan Dass) as the addressee, and after receipt of the same when it was annexed to a document which he himself signed after getting it typed it must be said Bal Kishan Dass was also a party thereto. For the self-same reason Bal Kishan Dass would be also culpable for filing the earlier missing report with the police.

B When these facts and circumstances are considered in Juxta-position with the presence of Bal Kishan Dass in the house when the murder took place the only inference that can be drawn is that he was a party to the murder of Rama and removal of her dead body.

C As regards accused Ashok Kumar, his conviction under Section 201 IPC has got to be upheld in view of the unimpeachable evidence of Ishab Singh (P.W.8) and other evidence discussed earlier, which indubitably proves that being fully aware that Rama had been murdered he actively associated himself in removal of her dead body, obviously to screen the offenders.

D On the conclusions as above we uphold the conviction of Ashok Kumar under Section 201 IPC but considering the facts and circumstances of the case and particularly the fact that since the offence was committed more than fourteen years have elapsed we reduce the substantive sentence of rigorous imprisonment of five years imposed upon him for the above conviction to rigorous imprisonment for two years. Subject to the above modification regarding sentence his appeal (Being Cr1. Appeal No. 82 of 1988) is dismissed. Cr1. Appeal No. 221 of 1988) preferred by Mahesh Narain, is also dismissed with only this modification that his conviction under Section 302 IPC (simpliciter) will stand altered to one under Section 302/34 IPC but the sentences imposed upon him shall stand confirmed.

E Cr1. Appeal No. 120 of 1988 filed by the State of U.P. is partly allowed in that, the appeal so far as it relates to the acquittal of Suresh Narain is dismissed but in respect of Bal Kishan Dass the same is allowed. The acquittal of Bal Kishan Dass is set aside and he is convicted of the offences under Sections 302/34 and 201/34 IPC. For his conviction under Section 302/34 IPC he is sentenced to suffer imprisonment for life but no separate sentence is passed for the other conviction. Suresh Narain, who is on bail, is discharged from his bail bonds. The other three accused persons, namely

F Bal Kishan Dass, Mahesh Narain and Ashok Kumar, who are on bail, will now surrender to their bail bonds to serve out the sentences.

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